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The Law Commission

Working Paper No. 111

Part II of the Landlord and Tenant Act 1954

HER MAJESTY'S STATIONERY OFFICE

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This working paper, completed on 31 August 1988, is circulated for comment and criticism only. It does not represent the final views of the Law Commission. The Law Commission would be grateful for comments on this working paper before 31 March 1989. All correspondence should be addressed to:

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The Law Commission

Working Paper No. 111

Part II of the Landlord and Tenant Act 1954

LONDON
HER MAJESTY'S STATIONERY OFFICE

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THE LAW COMMISSION

WORKING PAPER NO. 111

PART II OF THE LANDLORD AND TENANT ACT 1954

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SUMMARY

Part II of the Landlord and Tenant Act 1954 gives tenants of all types of business property the right to renew their leases, with limited exceptions and subject to certain conditions. In this Working Paper, the Law Commission canvasses views on, and makes proposals for, improving the working of the 1954 Act. Amongst the topics examined are: the effect of time limits for applications for a new tenancy, which mean that tenants have to take legal proceedings in many cases which go no further than the initial step; the stalemate created by lease clauses requiring the tenant to surrender the property back to the landlord before assigning, as a result of which the contract created by accepting the offer is void but the tenant is nevertheless not authorised to assign; and the lack of sanction to support the statutory obligations to provide necessary information.

All the views expressed in this Working Paper are merely provisional. Its purpose is to obtain comments on them from landlords and tenants of business property, professional advisers and others concerned with property matters.

THE LAW COMMISSION

LANDLORD AND TENANT

PART II OF THE LANDLORD AND TENANT ACT 1954

PART I

INTRODUCTION

1.1 The Landlord and Tenant Act 1954, Part II, gives business tenants security of tenure by providing for the continuation and renewal of their tenancies, subject to certain conditions. The intention is to give traders a general right to retain their business premises so long as they comply with their obligations as tenants. Landlords are entitled to a full market rent, revised from time to time, and are not unreasonably prevented from regaining possession if they want the property for their own occupation or to redevelop it. The Act is an important piece of legislation which affects a large number of properties and a considerable section of the community. It has generated a lot of litigation and very many more cases are settled following negotiations conducted in the light of the statutory provisions.

1.2 In 1969, the Commission published a Report[1] proposing some amendments to the 1954 Act. That Report said, "On the whole it [the Act] has worked well, but in the

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1. Report on the Landlord and Tenant Act 1954 Part II (Law Com. No. 17).

14 years that have elapsed since its enactment it has become apparent that in several respects the provisions of the Act have given rise to uncertainty or are likely to cause inconvenience and even injustice".[2] The Commission's recommendations were subsequently enacted in the Law of Property Act 1969.

1.3 Almost two decades later, we can again say that the Act is on the whole working well, but matters of detail have been shown to need improvement. With changes in business practice and property owners' requirements over the years, calls for changes are understandable. In addition, some lack of precision in the original terms of the Act has come to light. Bearing in mind the frequent use and wide-ranging effect of this Act, we consider that a periodic review of its terms is now appropriate.

1.4 In June 1984, the then Parliamentary Under-Secretary of State at the Department of the Environment announced a review of this legislation with particular reference to its effect on small, as well as other, business tenants. The Department sent a circular letter to a large number of interested bodies with a request that they should identify particular issues which they would like to raise, with a view to later study by the Department and further consultation. A large number of responses were received. In November 1985, the Parliamentary Under-Secretary of State announced that the review had concluded that no legislative changes would be sought. He said that the comments received supported the view that the Act "still works satisfactorily, and that the balance of rights between both parties to business lettings,

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2. Ibid., para. 1.

particularly where small businessmen are involved either as tenants or landlords, is being maintained".[3]

1.5 It is nevertheless clear that there are some matters causing concern to the users of the Act which, while they do not go to the heart of the legislation, could be reformed. We have therefore carried out a review. Its object has been to identify the mainly technical defects the remedy of which would aid the satisfactory working of the Act in accordance with its original purpose.

1.6 We agree that the balance which the Act strikes between the interests of landlords and those of tenants is broadly right. We are not proposing that any fundamental change be made. Nevertheless, it must be recognised that almost every amendment to the Act, however slight, necessarily makes some adjustment to that balance. We would not rule out a reform merely because, taken in isolation, it alters the balance. That would quite unnecessarily eliminate the chance to improve the working of the Act. What we accept is important is that the underlying purpose of the legislation should remain the same, and that it should be achieved with the same degree of even-handedness. For this reason we have decided that a few topics, which we see as affecting the basic approach which the Act takes, are beyond the scope of this periodic review.

1.7 The suggestions for reform we make in this Working Paper are put forward for comment, and we hope that as many as possible of those who use the Act in practice will give

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3. Hansard (H.C.) 20 November 1985, Vol. 87, Written Answers, col. 245.

us their views. Necessarily, this Paper deals with the detailed points individually, but - bearing in mind the aim of maintaining the balance - we should also welcome views on the overall effect of the final package of reforms envisaged by those who comment.

1.8 Part II of this Paper gives a brief summary of the provisions of the Act. This overview will allow readers to appreciate the context of the topics we have selected for discussion. For reference purposes, the relevant sections of the Act are reproduced in the Appendix in the form in which they currently apply. Part III of the Paper outlines the points of difficulty which we have identified, the questions on which we should welcome information and views and contains our proposals for reform. Part IV contains an index to the issues and questions raised in Part III.

1.9 In our study of this subject, we have received valuable assistance from Mrs Sandi Murdoch, Lecturer in Law at the University of Reading, and we are most grateful to her for her advice and help. Sir Wilfrid Bourne, K.C.B, Q.C., also gave us valuable help with preliminary work on this project, for which we should like to record our thanks. The views expressed in this Paper are, however, our own.

PART II

OUTLINE OF PART II OF THE LANDLORD AND TENANT ACT 1954

Introduction

2.1 The main thrust of Part II of the Landlord and Tenant Act 1954 is to ensure that a business tenant's[1] existing lease is continued until terminated in accordance with the Act. Where such a termination occurs, the tenant is normally given a right to apply for a new tenancy,[2] provided he complies with the Act's procedures. This application can only be resisted if the landlord is able to establish one of seven statutory grounds of opposition. In the absence of a successful opposition, a tenant is entitled to a new lease. The terms of this new lease will either be as agreed by the parties, or as determined by the court in accordance with the principles laid down in the Act (in particular, that the rent under the new lease will be at current market level). Unless the landlord succeeds in opposing the grant of a new tenancy on any of the grounds which involve default by the tenant or the offer of suitable alternative accommodation, the tenant who fails to obtain a

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1. The Act also currently applies , with some modification, to certain residential tenancies - assured tenancies: section 56 Housing Act 1980 (as amended). The current Housing Bill proposes to modify this.

2. The tenant may in certain circumstances be prevented from applying for a new tenancy where the landlord is one of a number of specified public bodies or on grounds of national security: ss.57, 58, 60A and 60B.

new tenancy is entitled to receive compensation for disturbance.

Tenancies within the Act

2.2 The Act applies[3] to all tenancies[4] where the property[5] comprised therein is occupied[6] by the tenant for business purposes. It is not necessary for the tenant to occupy the whole of the premises in order to qualify for protection, nor does he need to use the premises exclusively for business purposes. Thus premises used for mixed purposes[7] are within the 1954 Act.

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3. Section 23(1).

4. Certain types of tenancy are specifically excluded from the Act (see para. 2.4 below) and it is possible to exclude the Act by agreement authorised by the court: see para. 2.26 below. The Act does not apply to licences. Furthermore, it has been held that tenancies at will, whether arising by implication of law or created expressly, do not fall within the ambit of the Act: Wheeler v. Mercer [1957] A.C. 416; Hagee (London) Ltd. v. A.B. Erikson & Larson [1976] Q.B. 209.

5. This must comprise "premises" which are capable of physical occupation; hence leases of incorporeal hereditaments do not qualify for protection: Land Reclamation Co. v. Basildon Council [1979] 1 W.L.R. 767.

6. It is an essential pre-requisite of statutory protection that the tenant is either in physical occupation (whether personally or through an agent) of at least part of the premises, or is exercising sufficient "control" over the premises to be regarded as in occupation for the purposes of the Act: Lee-Verhulst Investments v. Harwood Trust [1973] Q.B. 204. A tenant who has sublet the whole of the premises and who is thus acting as a landlord passively receiving rents is not within the Act's protection.

7. This can cover two rather different situations. First, where part of the premises is used for business purposes

2.3 The Act defines "business"[8] extremely widely, going as far as to include "any activity"[9] provided only that this is carried on by a body of persons rather than by an individual. Thus the Act covers leases of premises which go well beyond a popular conception of "commercial" use.

2.4 The following types of tenancy are specifically excluded from the Act:

(a) agricultural holdings;[10]

(b) mining leases;[11]

(c) leases of on-licensed premises;[12]

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7. Continued
and a distinct part for, say, residential use (as in a shop with a flat above). Second, where the overall use of the premises is for a purpose which includes a significant business use, e.g. where a business is run from home: see Cheryl Investments Ltd. v. Saldanha [1978] 1 W.L.R. 1329.

8. Section 23(2) defines "business" as including "a trade, profession or employment and includes any activity carried on by a body of persons whether corporate or unincorporate."

9. In Hillil Property & Investment v. Naraine Pharmacy (1979) 39 P. & C.R. 67 it was held that although this term covers "something which is not strictly a trade, a profession or an employment, nevertheless to be an "activity" for this purpose it must be something which is correlative to the conceptions involved in those words.".

10. Section 43(1)(a).

11. Section 43(1)(b).

12. Section 43(1)(d). This exclusion does not cover hotel

(d) service tenancies;[13]

(e) tenancies granted for a term of six months or less.[14]

Also excluded from the Act are leases which have been extended under section 14 of the Leasehold Reform Act 1967.[15]

The scheme of protection

2.5 The fundamental aim of the Act is to confer on business tenants security of tenure without otherwise protecting them from market forces. The cornerstone of this policy is section 24 which provides that a tenancy to which the Act applies "shall not come to an end unless terminated in accordance with the provisions of this Part of this Act". Thus, a business tenant will enjoy the benefit of a continuation tenancy, at the existing level of rent, unless his lease has been brought to an end in an approved manner.

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12. Continued
or restaurant premises, provided a substantial proportion of the business relates to transactions other than the sale of intoxicating liquor; nor does it apply to railway refreshment rooms, nor to premises used for various public and entertainment purposes, to which the holding of a licence is ancillary.

13. Section 43(2).

14. Section 43(3); this exclusion does not apply if the tenancy includes a right to renew or extend beyond a six month term. Further, it does not apply if the tenant, or a predecessor in the business, has been in occupation for a period which exceeds twelve months.

15. Leasehold Reform Act 1967, s.16(1)(c).

Termination of the tenancy

2.6 The tenant can, unilaterally, bring his current lease to an end in any of the following ways:

(a) by the service of a request for a new tenancy under section 26 ("section 26 request");

(b) by the service of a notice to quit, provided this is not served before the tenant has been in occupation, under the lease, for a period of one month;[16]

(c) where the lease is for a fixed term, either by written notice served at least three months before the contractual term date,[17] or, where the tenancy has already been continued by virtue of section 24, on any quarter day, by three months written notice.[18] In either case, such a notice cannot be given before the tenant has been in occupation for at least one month, nor can it take effect before the expiry of the fixed term;

(d) by failing to serve a counternotice indicating unwillingness to give up possession, within two months of being served with a notice by the landlord under section 25[19] ("section 25 notice");

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16. Section 24(2)(a).

17. Section 27(1).

18. Section 27(2).

19. Section 29(2).

(e) by serving a counternotice to a section 25 notice, indicating a willingness to give up possession;[20]

(f) by failing to apply to court for a new tenancy between two and four months after either being served with a section 25 notice, or serving a section 26 request;[21]

(g) by withdrawing an application for a new tenancy.[22]

2.7 The landlord can bring the current tenancy to an end in any of the following ways:

(a) by the service of a section 25 notice to terminate the tenancy;

(b) by forfeiture;[23]

(c) where a tenancy has been continued under section 24, but has then ceased to be one to which the Act applies, by the service of between three and six months notice in writing.[24]

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20. Section 29(2).

21. Section 29(3).

22. In this case the current tenancy will terminate three months after the date of withdrawal: s.64(2).

23. Section 24(2).

24. Section 24(3)(a).

2.8 The parties can agree that the current tenancy will come to an end in either of the following ways:

(a) by entering into an agreement for a new tenancy;[25]

(b) by a surrender of the existing tenancy, provided the surrender was not entered into until after the tenant has been in occupation for at least one month.[26]

The renewal procedure

2.9 A tenant cannot apply to court for a new tenancy[27] unless either:[28]

(a) the landlord has served a notice to terminate under section 25; or

(b) the tenant has requested a new tenancy by serving notice under section 26.

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25. Section 28.

26. Section 24(2)(b).

27. Section 24(1).

28. The two forms of notice are mutually exclusive: section 26(4).

(i) Section 25 notices

2.10 Given that most business tenants do not wish to quit their premises and that they are, generally, favoured by a continuation tenancy at the existing rental level, it is normally the landlord who seeks to terminate the current tenancy by serving a section 25 notice. The service of such a notice does not necessarily indicate that the landlord wishes the tenant to leave the premises; more often than not it is the means by which the landlord is triggering the statutory renewal process so that the tenant will then occupy under a new lease at a market rent.

2.11 The landlord must give between twelve and six months notice, expiring on or after the contractual term date. The notice must take the statutorily prescribed form and the landlord, if he wishes to oppose the grant of a new tenancy, must state the grounds of opposition on which he may seek to rely.

2.12 A tenant who wishes to apply for a new lease must, within two months of being served with a section 25 notice, notify his landlord in writing of his unwillingness to give up possession. A failure to serve such a counternotice will lose the tenant any right to apply for a new tenancy and his existing tenancy will come to an end on the date specified in the section 25 notice.

(ii) Section 26 requests

2.13 Although a tenant normally benefits from the continuation, under section 24, of his existing tenancy, there are occasions where he may wish to initiate the Act's

renewal procedures.[29] He can do this by serving on his landlord a request[30] for a new tenancy. The request must be in the statutorily prescribed form and must specify the commencement date for the new tenancy which can be at any time between twelve and six months after the request, provided only that the specified date must not be earlier than the contractual date for termination.[31] The request must set out the tenant's proposals as to the terms (including the rent) of the new lease.[32]

2.14 A landlord who wishes to oppose any application for a new tenancy must, within two months, serve a counternotice[33] on the tenant stating the grounds of opposition on which he may choose to rely. A failure to do so will mean that the landlord loses any right to oppose.[34]

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29. Not all tenants whose leases are protected by the Act are entitled to serve a section 26 request. In order to be so entitled a tenant must have been granted either a lease for a fixed term exceeding one year, or a lease for a fixed term and thereafter from year to year: s.26(1). A tenant who cannot serve a section 26 request can, nevertheless, apply for a new tenancy in response to his landlord's section 25 notice.

30. The tenant cannot make a request if the landlord has already served a section 25 notice (s.26(4)) or if he has previously served either a notice to quit or a section 27 notice.

31. Section 26(2).

32. Section 26(3).

33. Section 26(6).

34. Section 30(1).

(iii) Application to court

2.15 Although the vast majority of new leases under the 1954 Act come into being as a result of the agreement of the parties, the tenant, if he is to preserve his statutory right to a new tenancy, must make an application to the court between two and four months after the service of either a section 25 notice or section 26 request.[35] A failure to comply with this requirement will lose the tenant his renewal rights under the Act. In practice, it is usual for an application to be made and any hearing to be adjourned indefinitely while the parties negotiate.

2.16 Once the tenant has protected his right to renew by lodging and serving an application, the parties are free to start or continue to negotiate. Such negotiations, especially if unsuccessful (so that a resort to court is necessary), may well continue beyond the date specified for the termination of the current tenancy in the section 25 notice or section 26 request. To accommodate both lengthy negotiations and litigation delays, the Act[36] provides that, once an application to court has been made, the current tenancy is continued until three months after the application is finally disposed of.[37] Should the tenant either withdraw his application or abandon an appeal, the three month period is calculated from the date of withdrawal or abandonment. Where the parties negotiate a new tenancy, the commencement date of that tenancy and, therefore, the termination date of the existing tenancy, will be as agreed.

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35. Section 29(3).

36. Section 64.

37. Thus any appeal, or period during which an appeal may be lodged, must be added on.

Interim rent

2.17 Clearly, in a rising market any continuation of the current tenancy beyond its contractual term date is likely to disadvantage the landlord, who will only be receiving rent at the existing level. The Act therefore provides that, once either a section 25 notice or section 26 request has been served, a landlord can apply for the payment of interim rent.[38] This rent, which is normally at a figure somewhere between the existing rent and the rent under the new tenancy, is payable from either the date specified in the landlord's section 25 notice or the tenant's section 26 request, or from the date on which the landlord applied for interim rent (whichever is the later) until the end of the continued tenancy.

Opposing the grant of a new tenancy

2.18 The Act permits a landlord to oppose the grant of a new tenancy on one or more of seven statutory grounds, provided only that any ground on which he seeks to rely has been stipulated in either the section 25 notice or in a counternotice to a section 26 request.[39] These grounds are:

(a) breach of the tenant's repairing obligations;

(b) persistent delay in paying the rent;

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38. Section 24A.

39. Section 30(1). The right to renew may also be excluded in certain cases involving public rights and national security: sections 57, 58.

(c) substantial breaches of the tenant's other obligations, or any other reason connected with the tenant's use or management of the holding;

(d) the provision of suitable alternative accommodation;

(e) where the current tenancy is a subletting of part only of the property comprised in a head-lease and the reversioner of that headlease can demonstrate that the property could, more economically, be let as a whole;

(f) that the landlord intends to demolish, re-construct or carry out substantial works of construction;[40]

(g) that the landlord intends to occupy the premises for the purposes of a business carried on by himself (or a company which he controls) or as his residence. This ground is not available to a landlord who has purchased his interest in the property within the preceding five years.

2.19 Where the landlord is relying on grounds (a) - (c) or (e), he must not only prove the ground, but must also persuade the court that the tenant "ought not to be granted"

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40. The landlord must also show that he cannot carry out the proposed work without obtaining possession of the premises. In this context "possession" means legal, and not merely physical, possession: Heath v. Drown [1973] A.C. 498; see also s. 31A and Cerex Jewels Ltd. v. Peachey Properties Corporation Plc [1986] 2 E.G.L.R. 65 (C.A.).

a new tenancy. If the landlord establishes any of the other three grounds of opposition, the court has no residual discretion.

2.20 The tenant is entitled to compensation[41] for disturbance in three situations:[42]

(1) where the court refuses to grant a new tenancy on grounds (e), (f) or (g);

(2) where these are the only grounds specified by the landlord and the tenant either does not make, or withdraws, his application for a new tenancy;

(3) where the tenant is precluded from obtaining a new tenancy by the exercise of rights available in certain cases involving public interest or national security.

The grant of a new tenancy

2.21 In the absence of a successful opposition by the landlord and provided the Act's procedures have been

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41. The landlord must pay the tenant three times the rateable value, or six times the rateable value if the tenant and any predecessor in business has been in occupation for at least fourteen years: Landlord and Tenant Act 1954 (Appropriate Multiplier) Order (S.I. 1984 No. 1932). In 1980, the Secretary of State was given power to prescribe the appropriate multiplier (1954 Act, s. 37, as amended by the Local Government, Planning and Land Act 1980) and it has since been adjusted twice.

42. Sections 37, 59.

complied with, the court is empowered to order the grant of a new tenancy.[43] This tenancy will be either on such terms as the parties have agreed, or on terms determined by the court in accordance with the principles laid down in sections 32 to 35.

2.22 Following the making of such an order, the tenant has fourteen days in which to decline the tenancy. If he does so decide then the court is bound to revoke the order, although it can order that the current tenancy shall continue for a period which will give the landlord a reasonable oppportunity to re-let. Otherwise, the landlord is obliged to grant, and the tenant is obliged to take the tenancy so ordered.

The terms of the new tenancy

2.23 In the absence of agreement between the parties, the court will determine the terms of the new tenancy. Various provisions in the Act govern the property to be comprised in the new tenancy, its duration, the rent and any other terms.

2.24 Briefly, the tenant is only entitled as of right to a new tenancy of the "holding", i.e., those parts of the demised premises which he actually occupies.[44] The court can only impose a term of up to fourteen years,[45] although the parties can agree a longer term and this can be included

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43. Section 29(1).

44. Sections 32 and 23(3).

45. Section 33.

in the order. The rent under the new tenancy is that which could be obtained in the open market, disregarding the tenant's occupation, goodwill, certain tenant's improvements and, where the premises are licensed, the effect of any licence belonging to the tenant.[46] Any other terms of the new lease will, in default of agreement, be determined by the court, having regard to those contained in the existing lease and to all relevant circumstances.[47]

Contracting out

2.25 Originally, the Act[48] contained a blanket prohibition on any agreement which purported to exclude the tenant's rights under the Act, or to bring the tenancy to an end should the tenant try to exercise his rights under the Act, or to penalise the tenant for exercising his rights under the Act.

2.26 Following the recommendations of the Law Commission,[49] a new subsection was added to section 38 by the Law of Property Act 1969. This[50] allows the parties to a business lease to make a joint application to court seeking approval for the grant of a fixed term tenancy to which the Act will not apply. In practice, provided both

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46. Section 34.

47. Section 35. The burden is on the party proposing the change to show that it is fair and reasonable in the circumstances: O'May v. City of London Real Property Co. Ltd. [1983] 2 A.C. 726.

48. Section 38.

49. Report on Landlord and Tenant Act 1954 Part II (1969) Law Com. No.17.

50. Section 38(4).

parties are in receipt of proper legal advice, it is highly unlikely that a court will withhold its approval.[51]

51. See Hagee (London) Ltd. v. A.B. Erikson & Larson [1976] Q.B. 209, 215; and para. 3.5.9 below.

PART III

REFORM PROPOSALS

Introduction

3.1 This Part of the consultation paper considers the points of difficulty which we have identified in our study of the Act and contains our suggestions for reform. It is divided into six sections arranged under the main subject headings. However, the order in which the topics are considered is not intended to reflect their relative priorities for reform. The discussion in each section is followed by a summary of the points on which we invite views.

1. OCCUPATION FOR BUSINESS

The problems

3.1.1 The primary qualification for the 1954 Act renewal rights is, in summary, that the tenant occupies the property for his own business. In the statutory words, the requirement is that "the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes".[1]

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1. Section 23(1).

3.1.2 Three questions of difficulty arise from this and need to be considered.

(a) Ownership of the business. Who owns the business is of concern both in relation to tenants, in determining their qualification for statutory protection, and in relation to landlords, because one of the grounds on which they can resist an application to renew is that the landlord "intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him therein ...".[2]

(b) Occupation of the property. There are a few leases which are of considerable importance to a business, but which are excluded from the Act's scope because what they let cannot be "occupied".

(c) Unauthorised business use. Even though the terms of a lease forbid the tenant to use it for business, he can obtain renewal rights if the landlord agrees to business use. The question arises how far the landlord's mere acquiescence should have the same effect.

A. OWNERSHIP OF BUSINESS

The present position

3.1.3 A landlord or tenant qualifying for rights under the 1954 Act must be, respectively, the person intending to

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2. Section 30(1)(g).

carry on business on the property in question, or be carrying it on there already. The underlying policy is clear. First, renewal rights are intended for those tenants of business premises who are themselves in occupation. Secondly, to oppose renewal on the ground that he intends to conduct a business on the property, the landlord must propose to do so personally.

Case for reform

3.1.4 This becomes more complicated as soon as one recognises that people do not always organise their affairs so that it is the person in whom the title to the property is vested who carries on the business. However, splitting the ownership of the property from the ownership of the business may jettison all rights under the 1954 Act. It may fairly be thought that if the ultimate ownership of the property and of the business is identical, the policy of the Act is not undermined, and indeed would require that the Act should apply. In some, but not all, such cases statutory rights are in fact available. It is open to question whether the rights of landlords and of tenants under the 1954 Act should depend on precisely how they choose to organise their business affairs.

3.1.5 As a matter of principle, the general law treats companies as separate from their shareholders. This is so even if one person beneficially owns all the company's shares. Even when someone in business would refer to the tenant of a shop as "trading through his company", the legal analysis is that the tenant and the trader are different persons. There is the same separation if the trader is an individual and the tenant the company which he owns. A landlord and a company which he owns are similarly separate in law. For the purposes of the 1954 Act, these

arrangements, and similar cases of trustees and their beneficiaries, have different effects. Is this sensible and desirable?

3.1.6 The 1954 Act has already gone some way towards breaking down the rigid distinctions between connected parties. The cases in which the landlord or the tenant may at present be different from those in occupation or intending to occupy are:

(a) a landlord can reclaim possession of property on the ground that a company controlled by him will carry on business there;[3]

(b) where the tenant is a company which is a member of a group of companies, another company in the group may occupy the property and carry on business there, and this satisfies the condition that the tenant is in occupation for business purposes;[4]

(c) similarly, a company landlord can oppose the grant of a new tenancy on the ground that the property is required for occupation by another group company to carry on business;[5]

(d) if trustees are tenants, occupation of the property by beneficiaries of the trust,

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3. Section 30(3).

4. Section 42(2).

5. Section 42(3).

carrying on business there, suffices for the trustees to qualify under the 1954 Act;[6]

(e) trustee landlords can oppose the grant of a new tenancy on the basis that the property is to be occupied for business purposes by beneficiaries;[7]

(f) on certain conditions, those joint tenants who are carrying on business on the property in partnership enjoy the 1954 Act renewal rights.[8]

3.1.7 However, in those cases not covered by special statutory exceptions, the rule requiring on the one hand that tenants and occupiers, and on the other hand that landlords and intending occupiers, be identical remains firm. So, for example, an individual tenant trading through the medium of a company has no renewal rights.[9]

3.1.8 As will readily be seen, there are many cases of connected parties where the fact that they are separate in law prevents their having rights under the 1954 Act. A company landlord cannot oppose the renewal of a tenancy to

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6. Section 41(1).

7. Section 41(2).

8. Section 41A.

9. Christina v. Seear [1985] 2 E.G. L.R. 128; Nozari-Zadeh v. Pearl Assurance Plc [1987] 2 E.G.L.R. 91. It has been suggested that these cases could have been treated as examples of the tenant holding the property in trust for the company, thus bringing the facts within the trustee-beneficiary exception: Woodfall, Landlord and Tenant, para. 2-0646.

allow the person who controls the company to occupy the property and trade there. Occupation by a company does not give its controlling shareholder renewal rights as tenants, nor are there any rights in the reverse case (company tenant, controlling shareholder occupier). Again, the provisions for groups of companies cover a "pyramid" of companies, under the umbrella of a single holding company, but not a number of companies which are associated because they are all controlled by the same individual shareholder.

3.1.9 The present position seems to have been reached by a piecemeal, pragmatic reaction to hard cases, rather than by comprehensively applying a coherent principle. For example, the provision in the Act allowing a landlord to oppose the grant of a new tenancy on the ground that his company would be trading at the property[10] was introduced[11] following a decision that the original terms of the Act gave no such right.[12] Danckwerts L.J., giving judgment in that case, said:

> "I reach this result with some reluctance, because it is from a commonsense point of view an artificial result (though the conception of a limited company, it must be said, is a legalistic and artificial conception); and also because I have a feeling that if the landlord's business affairs had been suitably arranged, the requirements of the Act might have been satisfied (provided, of course, that any such arrangements were genuine and not a mere sham)".[13]

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10. Section 30(3).

11. By the Law of Property Act 1969, s.6.

12. Tunstall v. Steigmann [1962] 2 Q.B. 593.

13. Ibid., p.608.

3.1.10 On the other hand, when the original Bill was introduced, an amendment to extend protection to a tenant who formed a company to run his business was rejected.[14] It was felt that he could readily maintain protection by assigning or sub-letting to the company. Many leases, however, restrict or forbid such a move.

3.1.11 By whatever means we have arrived at the present position, it clearly lacks logic. Certainly, it may be possible for some landlords and some tenants deliberately to order their affairs to take advantage of the 1954 Act provisions. But we doubt whether people should be decisively influenced in the way in which they trade by the impact of this legislation. Conversely, it is hard to see why the trading arrangements which someone adopts should drastically alter his property rights.

3.1.12 The problem areas all relate to companies. It is true that the provisions in the Act about trustees and beneficiaries assume that the trustees will be the property owners and the beneficiaries will conduct the business,[15] but the reverse case is unlikely. Trustees do not normally have the power to trade. Similarly, the rules concerning partners only deal with them as tenants.[16] The Act's provisions already extend to joint landlords, and we know of no problems specifically encountered by partners as landlords.

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14. Hansard (H.C.) 1953-54 vol. 528, col. 2438.

15. Section 41; see para. 3.1.6 (d), (e) above.

16. Section 41A; see para. 3.1.6 (f) above.

Provisional conclusion

3.1.13 We provisionally conclude that the rules relating to companies should be reformed. We should welcome the views of others: is reform needed, and can it be confined to cases of companies?

3.1.14 The breaches of the general rule separating companies and their shareholders until now have taken the form of ignoring the "corporate veil" behind which shareholders are normally hidden. This seems an appropriate direction for further reforms to take. We provisionally conclude that the time has come to make a general rule for this purpose, treating companies as identical to the individuals who control them, and to treat companies controlled by the same individual as members of a single group of companies. The Act already contains a definition of who has a controlling interest in a company,[17] and we would suggest that this be adopted for the purposes of any new rule. It is worth emphasizing that such a provisions would have no effect beyond the 1954 Act, so that other rules concerning company structure would not be affected.

3.1.15 An alternative course, which seems to us to be less satisfactory, would be to isolate particular cases in which it would be helpful to remove the corporate veil and to confine any reform to those cases. We would invite those who favour that approach to suggest to which cases the reform should apply.

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17. Section 30(3).

Summary of issues

3.1.16 We therefore invite views on these points:

(a) Should, as we suggest, the rules relating to companies be reformed?

(b) Should, as we suggest, the corporate veil be removed for the purposes of the 1954 Act?

(c) Should the corporate veil be removed in some cases only, and if so which?

(d) Should any reform be confined to cases involving companies?

B. OCCUPATION OF THE PROPERTY

Leases of incorporeal hereditaments: the present position

3.1.17 In certain cases, a business tenant takes a lease of property where he cannot be said to "occupy" the premises, and as occupation of the premises is necessary to qualify for the protection of the 1954 Act, he is not protected. A typical case is a lease of a right of way over specified land. In Land Reclamation Co Ltd v. Basildon District Council,[18] e.g., a company which owned land on which it conducted a waste disposal business took a lease of a right of way over a road where others also enjoyed rights of way. It used the right of way for the purpose of its

18. [1979] 1 W.L.R. 767. The Court of Appeal held that the term "occupied" in s. 23(1) was not appropriate to describe the enjoyment of a right of way; and Shaw L.J. also indicated that an easement standing by itself could not be regarded as "premises".

business, and indeed that was the only vehicular access to its land. However, the Court of Appeal held that the company could not be said to occupy the land, and it therefore had no statutory right to renew its lease.

3.1.18 We should make it clear that the query arises only in respect of leases which let this form of property - an "incorporeal hereditament" - on its own. If land or buildings are let together with the benefit of a right of way, the right to renew applies in the normal way and extends to a renewal of the right of way.[19]

Should leases of incorporeal hereditaments be brought within the Act?

3.1.19 The first question which arises is whether, as a matter of policy, such a lease should come within the 1954 Act. If one views the policy of the Acts as protecting businesses and their goodwill from disruption by the operation of the reversion of property to the landlord under the leasehold system, the conclusion is that these leases should be protected. On the other hand, if one defines the policy in a more limited way - that the object is to protect business conducted on leasehold property - it seems right that they be excluded from protection.

3.1.20 The width of any possible extension of the Act must be recognised. Leases of incorporeal hereditaments include, e.g., leases of fishing rights, and although some may be used for business purposes, there will be many purely sporting ones. It is well established that the protection

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19. Section 32(3).

of the 1954 Act extends to leisure activities where the tenant is not an individual.[20] This must be taken into account in realistically assessing the implications of any extension.

3.1.21 The pure question of policy is not essentially one for us. However, it does seem that in some cases the types of business which the Act is there to protect are left exposed by this omission. Further, it hardly seems logical that rights of way come within the Act if they are ancillary to other property which is let and included in the same lease, but are outside it if let separately. Protection may therefore depend on the ownership of different pieces of land. We provisionally take the view that leases of incorporeal hereditaments should be protected. This is a matter on which we should welcome the views of others. We do not know how many leases are potentially affected, and information on this would also be welcome.

3.1.22 If leases of incorporeal hereditaments are to come within the 1954 Act, some adaptation of the qualifying conditions is clearly needed. The simplest would be to change the requirement of occupation in these cases to a requirement of use. With a straight substitution, which may well not be satisfactory for a statutory amendment but allow for the principle to be considered, section 23(1) of the Act would read:

> "... This Part of this Act applies to any tenancy where the property comprised in the tenancy is or includes premises which are used by the tenant and are used for the purposes of a business carried on by him ...".

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20. Addiscombe Garden Estates Ltd v. Crabbe [1958] 1 Q.B. 513.

Another approach would be to make the test 'use' instead of 'occupation' only in the case of leases of incorporeal hereditaments. This has the advantage of keeping changes in the Act to a mimimum.

3.1.23 There is an ancillary problem in admitting incorporeal hereditaments to the protection. The sum payable in compensation is a multiple of the rateable value,[21] so presumably if no change were made in the Act, there could be no compensation because the incorporeal hereditament was not rateable.

3.1.24 Clearly, if rateable values are to be used in relation to leases of incorporeal hereditaments, references will have to be to the rateable values of the property over which the rights are exercised. If this were felt to give a right to too much compensation, a different multiplier could be prescribed for such cases. For the courts' jurisdiction,[22] the value of the underlying property is likely to be satisfactory. In the absence of other conveniently available valuations, we provisionally favour adopting the rateable value of the underlying property.

Summary of issues

3.1.25 On the question of leases of incorporeal hereditaments, we should welcome views on these points:

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21. Section 37.

22. Section 63(2).

(a) Should these leases be brought within the protection of the 1954 Act as we suggest?

(b) How many leases are likely to be affected?

(c) If they are brought in, should the test be use by the tenant for business purposes, and should that test apply generally or only to leases of incorporeal hereditaments?

(d) Should the rateable value of the property over which rights are exercised be referred to for compensation and court jurisdiction purposes?

C. UNAUTHORISED BUSINESS USE

The present position

3.1.26 Perhaps surprisingly, there is no clear-cut rule stating whether a tenant who conducts a business without his landlord's approval is entitled[16] to the benefit of the 1954 Act. The way in which the position is at present expressed provides the opportunity for evading the Act.

3.1.27 The basic rule is that if the tenancy terms contain a total prohibition on using any part of the premises for business purposes, the tenant will not have statutory rights as a result of any business he carries on there.[23] This is subject to an exception. If the immediate landlord or his predecessor has consented to the business use, the tenant is protected. Also, if the immediate landlord (but not a

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23. Section 23(4).

predecessor) has acquiesced in that use, the tenant has statutory rights.

3.1.28 The two terms, used in this context, have been explained in this way. "[Acquiescence] may involve no more than a passsive attitude, doing nothing at all. It requires as an essential factor that there was knowledge of what was acquiesced in".[24] "'Consent' involves something which is of a positive affirmative kind".[25]

Case for reform

3.1.29 It seems likely that the policy lying behind this distinction turns on the difficulties of proof. If any landlord, present or former, has given express consent to establishing a business which the terms of the tenancy forbid, it would clearly be unjust that the tenant did not have the rights afforded to other business tenants. On the other hand, proof of acquiescence is likely to turn on whether or not the landlord in question knew that the business was being conducted. He will have accepted rent, which is taken as proof of acquiescence of any facts which he knows. That, however, leaves open the question whether he knew that a business was being conducted. The difficulties facing a current landlord in disputing the state of knowledge of his predecessor are obvious enough.

3.1.30 These provisions do, however, raise the prospect of manipulation by a landlord. If he finds that he has

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24. Bell v. Alfred Franks & Bartlett Co. Ltd [1980] 1 All E.R. 356, 360, per Shaw LJ.

25. Ibid.

acquiesced in the establishment of a business, which has given the tenant renewal rights which he regards as prejudicial, he can artificially escape from the Act. By assigning the freehold to an associate, the first landlord becomes the current landlord's predecessor, whose acquiescence in the tenant's business activities gives the tenant no rights. The new landlord takes steps to contest the tenant's rights to carry on the business, and he neither gives consent for, nor acquiesces in, that use of the property.

3.1.31 How far do others see this as a problem which needs to be tackled? We imagine, although we have no evidence, that there are few cases of business carried on in the face of a total prohibition in the tenancy against business use. If there is to be a reform, the solution would seem to lie in using the same test for both the current and former landlords, so that the ownership of the reversion is not critical to whether the tenant enjoys renewal rights. To give renewal rights if a former landlord has acquiesced in business use extends the tenant's chances of protection. To confine protection to the current landlord's positive consent reduces the tenant's rights.

Provisional conclusion

3.1.32 The arguments about the direction in which any reform should take place seem well balanced. Tenants are, in the circumstances envisaged, deliberately flouting the terms of the tenancy to which they previously agreed. To remove the curative effect of acquiescence, however, would be to allow landlords to mislead their tenants by remaining silent, lulling the tenants into a sense of false security. Accordingly, our provisional conclusion is that in the case of both the current and former landlords, acquiescence in,

or consent to, any business use by a tenant who is forbidden to use the property for business purposes should suffice to give him renewal rights.

Summary issues

3.1.33 On this topic, we should be glad to receive views on these points:

(a) Is there a need for reform of the circumstances in which a tenant, who carries on business although forbidden to do so, has renewal rights?

(b) How frequently do such cases occur?

(c) If the Act is to be reformed, should the tenant have statutory renewal rights:

(i) only if the current or a previous landlord consented; or

(ii) as we suggest, if the current or a previous landlord either consented or acquiesced?

2. NOTICES

A. LANDLORD'S NOTICE TO TERMINATE THE TENANCY

The split reversion

3.2.1 To end a tenancy which falls within the scope of the 1954 Act the landlord must, under section 25, serve notice in a prescribed form. Although it is not strictly a

notice to quit, this notice must relate to all the property let by the tenancy.[26] This is in line with the general rule of law that a notice to quit must relate to the whole property.[27] However, in the case of the notice to quit, but not of a notice under the 1954 Act, special statutory provisions apply if the reversion is split, with different landlords owning separate parts of the property. Each landlord can serve notice relating to his part, subject to the tenant's right to end the tenancy in relation to the remainder.[28]

3.2.2 Even where the lease itself gives the landlord express power to end it in relation to part of the property let, no 1954 Act notice can normally be effective.[29] There is one exceptional case. When the lease includes two distinct properties, and the parties have made it clear that the document is really to be construed as a separate lease of each, a notice can relate to one without the other.[30] Such cases are unlikely to be common.

Case for Reform

3.2.3 The general lack of flexibility in relation to section 25 notices has proved inconvenient, if not unjust. Landlords are prevented from freely dealing with their property, although if they are forewarned they can generally

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26. Dodson Bull Carpet Co Ltd v. City of London Corporation [1975] 1 W.L.R. 781.

27. Prince v. Evans (1874) 29 L.T. 835.

28. Law of Property Act 1925, s.140.

29. Southport Old Links Ltd v. Naylor [1985] 1 E.G.L.R. 66.

30. Moss v. Mobil Oil Co Ltd [1988] 06 E.G. 109.

avoid trouble. However, the facts of Dodson Bull Carpet Co. Ltd. v. City of London Corporation[31] demonstrate that landlords can sometimes find themselves without recourse through no fault of their own. The tenancy in that case was a sublease of two adjoining properties. The immediate, mesne, landlord held each property under a different lease; they expired at different times. The sublease ended at about the same time as the shorter head lease, and the subtenant remained in possession. The result, as far as he was concerned, was that he continued to hold part of the property from the mesne landlord and that he was holding the rest direct from the head landlord. The head landlord sought possession. However, he could not serve a valid section 25 notice in relation only to the latter part of the property, for the very reason that it was only part of what the lease had let, and he could not serve a notice which related to the rest of the premises, because he was not the "competent landlord" for statutory purposes in relation to part.

3.2.4 The policy of the legislation seems clear. Landlords are to be able to end tenancies in specified circumstances, either with a view to obtaining possession or in order to obtain a revision of the rent or other terms. However, the effect of the rule in cases where the reversion

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31. [1975] 1 W.L.R. 781. The reversioners together can constitute "the landlord" for the purposes of s. 25 (either by serving a single notice or separate notices operating at the same time) since together they are entitled to the entirety of the land comprised in the relevant reversion: Nevill Long & Co. (Boards) Ltd. v. Firmenich & Co. (1984) 47 P. & C.R. 59, 66-67 (C.A.). But this may not be practicable because, e.g., one landlord wants to oppose the grant of a new tenancy and the other does not or has no grounds on which to do so, with the result that the tenancy cannot be terminated until the reversion of both parts becomes vested in a single landlord.

is split, is to deprive landlords of this power. Even in cases where landlords can arrange their affairs so as not to fall into this trap, we think it is undesirable that the Act should deter property owners from dealing with their properties as they wish, as long as it can be arranged without undue detriment to tenants.

3.2.5 We agree with Oliver L.J. when he said: "It may well be (and I think it is) that the Act is defective in not making provisions for this rather unusual situation".[32] We provisionally conclude that there should be a reform.

Reform considerations

3.2.6 In considering the direction which any reform should take, there are important considerations to be taken into account from the tenant's point of view. There are good reasons why landlords should not be offered complete freedom to end tenancies under the Act in relation to part only of the property let, even if the notice they serve relates to all of the property that they happen to own. First, as we have discussed earlier,[33] a letting of any incorporeal hereditament on its own is outside the Act. If that remains unchanged, but splitting reversions is facilitated, tenants could be deprived of valuable rights. A landlord would only have to convey separately the land over which the tenant had the incorporeal right, and the tenant could not claim a statutory renewal in relation to

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32. Southport Old Links Ltd v. Naylor [1985] 1 E.G.L.R. 66, 69; n. 29 above. In a judgment in which the three members of the court concurred, the appeal was allowed "with some regret and some reluctance".

33. Paras. 3.1.17-3.1.18 above.

it.[34] Secondly, if the grounds available to landlords to resist tenants' claims to renew tenancies were permitted to apply in relation only to the property comprised in the notice, they could manipulate the extent of that property to help their cases. If, e.g., the landlord claimed that "on the termination of the current tenancy [he] intends to occupy the holding for the purposes ... of a business to be carried on by him therein",[35] he could so arrange matters that the only property he intended to occupy was the subject of the notice.

3.2.7 The tenant need not be a party to the transaction by which a reversion is split, and normally would not be. With this in mind, we think it would be wrong for any reform to afford to landlords any undue advantage. We suggest this test: has the split reversion unfairly given the landlord an advantage over the tenant which he would not otherwise have had?

3.2.8 As we have seen,[36] the landlord may find himself at a disadvantage not because it was he who split the reversion in the property which was demised, but because the property which was let - or, rather, sublet by a tenant - was partly his and partly someone else's. This suggests that it may not be appropriate to apply the same rules to all landlords. Stringent rules could reasonably apply to a landlord who originally let a property and then split the reversion, or

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34. This would have been the case in Nevill Long & Co (Boards) Ltd v. Firmenich & Co (1984) 47 P & C.R. 59, had it not been for the rule that a notice had to relate to the whole property.

35. Landlord and Tenant Act 1954, s. 30(1)(g).

36. Para. 3.2.3 above.

to his successor in title ("a voluntary landlord of part"). Other rules could apply to a landlord who, or whose predecessor as landlord, had only ever owned the reversion to part of the demised premises ("an involuntary landlord of part").

3.2.9 It is true that a landlord engaged in letting a property could foresee a later need to deal with parts of it separately, and could at that stage divide the ownership. Both owners would then join in the lease, and both would count as involuntary landlords of part. However, the tenant would surely be amply warned by the form of the lease with two landlords, each responsible for part only of the property.

3.2.10 The true distinction between the actions of the voluntary and the involuntary landlord of part is that fairness probably dictates that when the former serves notice, the tenant should be able to treat the notice as relating to the whole property. One landlord originally let him the property as a whole, and that landlord or his successor should not be in any more advantageous position simply by having manipulated the title to it. The involuntary landlord of part was, by contrast, only ever owner of part. His claims to deal with part only of the property may well be as strong as the tenant's to deal with it as a whole.

Reform proposals: extent of property affected

3.2.11 We have suggested below,[37] possible alternative

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37. Para. 3.2.15 below.

arrangements for notices to terminate a tenancy as to only part of the property let. Linked to either of these, we suggest for consideration rules depending on the status of the landlords. We would welcome views on these possibilities.

3.2.12 For voluntary landlords of part, there could be one of two ways in which the notice referring to only part of the demised premises could apply to the whole property:

(a) The service of a notice relating to part would automatically apply to the whole property. Although a simple rule, this would not necessarily be convenient for any of the parties involved. In some circumstances, tenants will prefer to accept the notice as referring only to part. The landlord of the remainder will presumably prefer that the notice should not apply to his part, otherwise he would himself have served notice.

(b) The alternative, which seems preferable because it offers greater flexibility, is that the tenant be entitled to require that a notice of part apply to the whole, or rather to the whole of the land of which he is then tenant under the lease. The other landlord would have to become involved, but that degree of compulsion would be a consequence of his being a voluntary landlord of part.

3.2.13 For involuntary landlords of part, there are also two possibilities:

(a) A notice relating to part of the property could always have effect as intended on its face (i.e., as to the specified part only). Certainly, this would involve the tenant being left with the remainder of the property, but the difficulty originally was none of the landlord's making. Indeed, the tenant had the opportunity to discover the position by investigating title when the lease was granted. We accept, nevertheless, that many tenants do not have a realistic chance to investigate title, and others do not avail themselves of it.

(b) A different view is that an involuntary landlord of part and a tenant receiving notice to terminate a tenancy as to part of the property will often both be innocent parties, and it is not possible in advance to see where the balance of justice should lie. An alternative is therefore to allow the tenant in such a case to ask the court to apply the notice to the whole property. The court would take into account all the circumstances, and make such order as appear just and equitable.

Reform proposals: circumstances of serving notice

3.2.14 We now turn to considering the circumstances in which a notice relating to part of the property could be served, and by whom.

3.2.15 Legislation to permit notices relating to part of the demised premises could take a number of forms.

(a) There could be a general power to give notice relating to part, applying even if there were no split reversions.

(b) A notice could be allowed if, in general terms the lease gave power for it to relate to part only of the property.

(c) In any of these cases, the authority could be restricted to notices concerning all the demised land of which the landlord then serving the notice was then owner.

3.2.16 Although the idea that a lease should , on its face warn that notice could be given in relation to part only of the property, is immediately superficially attractive, we doubt whether such provisions would be particularly useful. If the parts concerned had to be identified, there would be a lack of flexibility which could not take account of later changes in circumstances. If a general reference to the possibility of such notice were acceptable, it seems likely that a clause to that effect would become a standard provision in leases, inserted as a matter of routine. This would reduce its effectiveness as a warning. More fundamentally, however, a provision in a lease might well not be possible for an involuntary landlord of part. When he was a head landlord, he would not always be able to control the terms of the sublease.

3.2.17 We therefore incline to the suggestion that there should be a general power to serve notices in relation to part of the property. Tenants would be protected where notice was served by a voluntary landlord of part, by the power to insist that the notice related to the whole property. The extent of the tenant's protection where

notice was served by an involuntary landlord of part would depend on the decision made between the alternatives in paragraph 3.2.13 above.

3.2.18 To confine notices relating to part of the property to cases of split reversions, the suggestion in paragraph 3.2.15 (c) above should be implemented. Not to confine the statutory amendments in that way would go considerably further than tackling the main problem which we have identified. Nevertheless, it is pertinent to ask why the parties to a lease should not be able to agree on such an arrangement as a term of their original bargain. There would have to be some evidence that the matter had been considered by the parties. We doubt whether this would be provided by a general clause in the lease authorising notices relating to part of the property; a clause identifying to which part of the property a notice could apply would demonstrate that the parties had considered the question. Lack of flexibility necessarily involved in such clauses would be balanced by the considerable extension in landlords' powers. We accordingly put forward for consideration, as an extension of our proposals, that the safeguard in paragraph 3.2.15 (c) above - a notice must relate to all of a landlord's property - should not apply if the lease contains a clause complying with paragraph 3.2.15 (b) above - a notice can be served for a part of the property identified in the lease.

3.2.19 Although in some circumstances it might be convenient if all landlords had to join in all notices served under section 25, even if they related to part only of the property, we think that the burden of such a provision would outweigh its convenience. We therefore suggest that the Act should authorise notices to be served by whoever is landlord of the property to which the notice

relates. Proceedings relating to the notice, and any issues such as whether the landlord can resist the tenant's application for a new tenancy, would be settled between those parties. However, if the tenant had the right to require that the notice referred to the whole property and exercised that power, the landlord for all statutory purposes would then become all the landlords.

3.2.20 There is a transitional problem to be considered: should whatever rules are adopted apply to leases granted before the amending legislation comes into force? To the extent that the new rules would rest on the basis that the parties could in some circumstances inform themselves of the facts and act accordingly, they would be inappropriate. However, cases which have already come to court show that it is likely that there are already cases in which parties may need the assistance of the new rules.

3.2.21 Three possibilities may be considered. First, the new rules should only apply to new leases, because although inconvenient, the present rules are clear and no-one should have been misled. Secondly, the new rules should apply immediately, on the argument that they are the fairest that can be devised and parties to current leases should not be deprived of the benefit of them. Thirdly, any party to a current lease who wished to take advantage of the new rules should be entitled to do so on applying to the court and obtaining an order that to do so would not cause hardship to any other party involved.

3.2.22 We provisionally favour the second course, that the new rules should apply immediately in relation to existing leases. To rest the decision in all transitional cases on court decisions is likely to make for uncertainty, as well

as involving additional expense and delay. Further, the distinction which we have drawn between voluntary and involuntary landlords of part should remove some possible injustice.

Summary of issues

3.2.23 On the problems raised by split reversions, we should welcome views on these points:

(a) Should, as we suggest, the 1954 Act be amended to permit, at least in some cases, the landlord to terminate a lease in relation to part only of the property?

(b) Where a notice relating to part is served by a "voluntary landlord of part", should it -

(i) automatically apply to the whole property? or

(ii) as we favour, entitle the tenant to require that it apply to the whole property?

(c) When a notice is served by a "involuntary landlord of part", should it -

(i) always only apply to the part of the property specified? or

(ii) allow the tenant to apply to court for an order that it apply to the whole of the property?

(d) In the case of a split reversion, where a landlord is serving notice in relation to the whole of the property which he owns, should notice be permitted -

(i) in every case, as we suggest? or

(ii) in relation only to parts of the property identified by the original lease? or

(iii) if the lease authorises, in general terms, notices relating to only part of the property?

(e) Should notices relating to part of a property let be authorised even where there is not a split reversion, provided they refer only to parts of the property identified for the purpose in the original lease?

(f) Should notices relating to part only of the property be served only by the landlord of that part?

(g) Should issues arising out of a notice of part be settled between the tenant and the landlord of that part alone, unless the tenant requires that the notice be construed as referring to the whole of the property?

(h) In relation to tenancies already in existence when the Act is amended,

(i) should the new proposals not apply?

(ii) should they, as we suggest, apply fully?

(iii) should they apply if, but only if, the court so orders?

B. TENANT'S REQUEST TO RENEW THE TENANCY

3.2.24 A tenant who wants to renew a business tenancy can take the initiative by serving on the landlord a prescribed form of request.[38] Two criticisms of this procedure have been raised with us: first, that the scope of the provisions is not wide enough and, second, that tenants can unfairly manipulate them to gain an unwarranted advantage over landlords. We shall deal with each point separately.

(a) Periodic tenancy

(i) Should the request procedure be available to periodic tenants?

3.2.25 This request procedure is only available to a tenant who holds under "a tenancy granted for a term of years certain exceeding one year or granted for a term of years certain and thereafter from year to year".[39] The suggestion is that this is unduly restrictive, and that periodic tenants who cannot at present request a new tenancy should be able to do so. This was also suggested when the Act was last reviewed in 1969. The Law Commission then rejected the proposal to amend the Act, saying:

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38. Section 26.

39. Section 26(1).

> "We can see no merit in this proposal since a periodic tenancy of its nature continues indefinitely until it is terminated. If the landlord serves notice under section 25 to terminate the tenancy, a weekly or monthly tenant has the same right as other tenants under section 24(1)(a) to apply for a new tenancy".[40]

3.2.26 The suggestion to allow periodic tenants to serve a request for a new tenancy should be given a little more thought. Certainly, there are cases in which a business is conducted for many years on premises held under that type of tenancy. There may then come a time when the tenant wishes to make a substantial investment in improvements or to take some other important step which would be imprudent without greater security of tenure. Is the policy of the Act, to give business tenants the protection their businesses need, fulfilled by leaving the initiative entirely in the landlords' hands? If e.g. the landlord has long-term plans to recover possession of the property, he can time the service of his notice to end the tenancy to ensure his own best advantage.

(ii) Provisional conclusion

3.2.27 It might be thought that the arguments are more finely balanced than they appeared in 1969. However, for all the cases of long-term periodic tenancies, we think there must be many more which are short and temporary. We do not think that a proliferation of applications for new tenancies by such short term tenants would be helpful; nor indeed would they be likely to be productive, as the circumstances would hardly merit ordering a new tenancy of

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40. Report on the Landlord and Tenant Act 1954 Part II (1969), Law Com. No. 17, para. 53.

any appreciable length. Our provisional conclusion is therefore the same, that this rule should not be altered. However, we invite those who may disagree to make their views, and their grounds for disagreement, known to us.

(b) The pre-emptive strike

3.2.28 The manoeuvre on the part of tenants which the terms of section 26 makes possible has been colourfully called "the pre-emptive strike". It presupposes that, as will often be the case, the tenant is in possession under a lease reserving a rent which is below the current market level. It is therefore in the tenant's interest to prolong the old tenancy for as long as possible.

3.2.29 The stratagem turns on two facts: a tenant's request is for a new tenancy taking effect between six and 12 months after the request is served,[41] and once a request has been served the landlord cannot serve a notice under section 25 to end the tenancy.[42] So, if the landlord does not serve notice promptly, the tenant can forestall him. Take an example. A lease term expires on 30 June. During the previous December the landlord considers serving a notice to end the tenancy on 30 June, as he will be entitled to do, and expects that the new rent[43] will start then. Just before the landlord is ready to serve his notice, the tenant serves a request. However, instead of doing so on the basis that the new rent will start as soon as possible, he names the following 15 December as the date for the new

41. Section 26(2).

42. Section 26(4).

43. Or at least an interim rent.

lease to begin. He is fully entitled to do that, but it gives him nearly six months longer at the old rent.

(i) Possible reforms

3.2.30 This seems to be unfair manipulation of the rules, but that does not necesssarily mean that the basic provisions - allowing a six month period for the service of notices and requests, and a minimum of six months before they take effect - should be changed. Indeed, we are not aware of any complaint about those periods. There are, however, possible modifications:

(a) It could be made obligatory for a tenant's request to have effect as soon after its service as possible, i.e. at the next following contractual term date or in six months' time, whichever is the later.

(b) The rule that making a tenant's request precludes the service of a landlord's notice could be dropped. The reverse rule would then go as well.

(c) It could be made possible for the recipient of a tenant's request or a landlord's notice, by giving a counternotice, to foreshorten the current tenancy. The counternotice would require that the original request or notice take effect to end the current tenancy on the earliest date on which a notice or request served, when the counternotice was served, could have ended it.

The way in which the third possibility, in sub-paragraph (c) above, would work can be illustrated by taking two cases. Assume for both that a lease of business premises was granted for a term ending on 25 December 1990. In the first case, a tenant serves a request for a new lease under section 26 on 21 June 1990, naming 20 June 1991 as the date for the current lease to expire. The landlord's counternotice, if served on or before 25 June 1990, could require the request to take effect so that the current tenancy ends on 25 December 1990. The original term date is the earliest date upon which the lease can be brought to an end, but there must be a full six months from the date of service of the landlord's counternotice. In the second case, it is assumed that neither party to the lease took any action to end it before the term date, but the tenant served a section 26 request on 15 January 1991, naming 10 January 1992 as the date for the current lease to expire. If the landlord served a counternotice on 30 January 1991, it could require the tenant's request to take effect to end the lease on 30 June 1991, i.e. six months later.

(ii) Provisional conclusion

3.2.31 We provisionally conclude that it is worth amending the Act to stop the possibility of pre-emptive strikes, and favour the third course. There can be good reasons for a tenants's request to take effect as far in advance as possible, if only to give ample time for negotiating revised terms, and there seems no good reason to eliminate this possibility in every case. To allow a landlord's notice after a tenant's request had been made, or vice versa, would open the way to a muddling proliferation of notices passing between the parties, and would entail considerable amendments to the established familiar practice. The third suggestion, allowing one party to shorten the time of the other's notice, is even-handed. It does require the

introduction of another counternotice and will sometimes reduce negotiating time. Nevertheless, it seems a practical and acceptable way to eliminate the abuse we have identified.

(c) Summary of issues

3.2.32 In relation to the tenant's power to request a new tenancy, we welcome views on these points:

(a) Should, contrary to our provisional conclusion, periodic tenants have the power to make a request?

(b) Should, as we propose, the rules be revised to reduce or eliminate the tenant's power to make a "pre-emptive strike"?

(c) If so, should-

(i) a tenant's request take effect with the minumum delay?

(ii) a request be possible after the landlord has served notice to end the lease, and vice versa?

(iii) as we propose, the recipient of a request or a notice to end the lease be able to require that it take effect with the minimum delay?

C. TENANT'S NOTICE ENDING CONTINUED FIXED-TERM TENANCY

The problem

3.2.33 A small point arises on the procedure which enables a tenant to bring to an end a fixed-term tenancy which the Act has automatically extended. If the tenant wants to give up the tenancy and quits the property, he has to give at least three months' notice ending on a quarter day.[44] We assume that this means one of the usual quarter days,[45] although that is not expressly stated. The result is that the Act requires periods of notice which differ considerably, depending on when notice is given. For example, a notice given on 24 September can expire on 25 December (92 days), but if it is given on 30 Septemeber it cannot expire until 25 March (176 days).

Provisional conclusion

3.2.34 If the Act were to be amended so that the three months' notice could expire at any time, the only variation in the notice periods would result from the differing lengths of calender months. This would make the working of the Act less capricious. We invite views on this suggestion.

D. NOTICES REQUIRING INFORMATION

Sanction for breach

3.2.35 The statutory renewal procedure assumes, for the most part, that it will be conducted between the "competent

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44. Section 27(2).

45. 25 March (Lady day), 24 June (mid-summer), 29 September (Michaelmas), 25 December (Christmas).

landlord" (who may not be the immediate landlord of the tenant in possession) and the occupying tenant. The identity of one of these parties may not be known to the other, and a tenant who takes proceedings against the wrong landlord may lose his right to renew.[46] Again, the identity of the relevant party may change as a case proceeds.[47] For these reasons, the 1954 Act gives a landlord and a tenant the right to serve notice on the other requiring him to give relevant information.[48] Clearly, the right to that information about the identity of the parties is an important safeguard for those who wish to exercise their statutory rights.

3.2.36 The criticism which has been levelled at the provision is that there is no sanction against parties who do not properly respond to notices. It may be that an action for breach of statutory duty would lie,[49] but we are not aware of any such action having been successful, so the possibility remains that it would not be available. This seems to us too uncertain to be satisfactory, and we favour some express provision.

Possible reforms

3.2.37 Possible reforms would be:

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46. Beardmore Motors Ltd v. Birch Bros. (Properties) Ltd. [1959] Ch. 298.

47. Rene Claro (Aute Coiffure) Ltd v. Halle Concerts Society [1969] 1 W.L.R. 909.

48. Section 40.

49. Aldridge, Leasehold Law, para. 2.082.

(a) To make it an offence to fail to respond without reasonable excuse. It does not seem to us to be appropriate to introduce a criminal sanction into this sort of dealing between landlord and tenant, and moreover once an offence had been committed the person with the right to information would not be compensated for the other's failure.

(b) To prevent the defaulter from taking further steps in any procedure for a new lease of the property in question. In some circumstances this would be a powerful sanction, but in others the person in question might not want, nor even be entitled, to take any such steps.

(c) Expressly to give the person serving the notice a right of action against a recipient who failed to respond, for all damage flowing from that failure. This seems to go to the heart of the matter, and is the course we provisionally favour. Some may favour limiting liability to those who wilfully or negligently fail to give information; however, in contrast to cases where a criminal sanction is imposed, this is not so much a case of deciding whether a defaulter is to blame, but rather which of two innocent parties is to bear the loss.

Summary of issues

3.2.38 We accordingly invite views on these points on the power to require information:

(a) Should an express sanction be written into the Act, as we propose?

(b) If so, should the sanction be-

(i) a criminal one?

(ii) to prevent the defaulter taking other statutory steps?

(iii) as we propose, to give an express right of damages against the defaulter? In this last case, should liability be limited to wilful and negligent defaulters?

3. TIME LIMITS AND COURT APPLICATIONS

The problems

3.3.1 The 1954 Act imposes a series of strict time limits on the statutory procedure to renew business leases. This is no doubt intended to avoid deliberate delaying tactics by one party to the prejudice of the other. Although these limits have come in for criticism, we consider that any changes should recognise the importance of maintaining the impetus of the negotiations.

3.3.2 The criticisms of the time limits stem mainly from the fact that parties regularly fail to meet them. Being late in taking a procedural step, and indeed being too

early,[50] can result in the complete loss of statutory rights. Although in theory we recognise that clear and well-known time limits can be helpful in achieving prompt lease renewals, the fact is that they have proved to be traps which have become the deciding factor in cases which have therefore not turned on their real merits. For this reason, we believe they merit reconsideration.

3.3.3 One particular time limit, the requirement that tenants commence proceedings for a new lease within a fixed period, also has another result. A very large number of court cases are commenced,[51] purely as a precautionary measure and without any intention that they will proceed. We understand that it is a matter of routine to apply for an adjournment sine die at the same time as submitting the original application to the court. If there are other ways to safeguard the parties' position, there is scope here for savings of time and expense and of court resources.

A. COUNTERNOTICES

(a) The present position

3.3.4 The renewal procedure requires a counternotice to be served within strict time limits in two cases. If a landlord serves notice to end a tenancy, the tenant must within two months give the landlord written notice to say

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50. Kammins Ballrooms Co. Ltd. v. Zenith Investment (Torquay) Ltd. [1971] A.C. 850.

51. In 1985 and 1986 the number of application under s.24 filed in the county court were 15,941 and 16,464 respectively; 2,076 orders granting a new tenancy were made in 1985 and 2,908 in 1986.

whether he is willing to give up possession.[52] In default, the tenant cannot take proceedings for a new tenancy.[53] If the tenant serves a request for a new tenancy, the landlord may within two months give notice that he will oppose a renewal and state the grounds of opposition.[54] The landlord is only entitled to oppose on grounds given in that counternotice.[55]

(b) Provisional conclusions

(i) Landlord's counternotice

3.3.5 It is convenient to deal first with the landlord's counternotice to a tenant's request for a new tenancy. Clearly, this serves an important function. The issues between the parties should be defined as soon as possible, and the tenant warned if he is going to face opposition. Not only the need for a counternotice, but also the imposition of a time limit, seems justified. No case has come to our attention in which a landlord has lost his right to oppose the grant of a new tenancy through failure to serve a counter notice, although it is perhaps inevitable that there have been some. The lack of reported cases does suggest that this is not a real problem. We provisionally conclude, therefore, that no amendment is required to the Act.

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52. Section 25(5).

53. Section 29(2).

54. Section 26(6).

55. Section 30(1).

(ii) Tenant's counternotice

3.3.6 By contrast, the tenant's counternotice in response to a landlord's notice must merely state whether or not the tenant is willing to give up possession, and failure to serve one has resulted in the loss of renewal rights.[56] The usefulness of this counternotice is much more limited. Although it can serve to inform a landlord who wishes to reclaim possession whether there will be a contest, it is more usually served as a matter of routine, stating that the tenant does not wish to quit, as soon as the landlord's notice is received and before the tenant has given the matter detailed thought. Also, it should be observed, a counternotice is required even in cases where the landlord's notice states that the landlord will not oppose the grant of a new tenancy. In the case of this counternotice, therefore, there is some doubt whether it is always useful, and it has proved to be a trap. We suggest that reform be considered.

3.3.7 Possible courses of action are:

(a) The requirement for a tenant's counternotice could be abolished. This would simplify the procedure slightly, and remove one trap. But there might be cases in which the landlord remained uncertain of the tenant's intentions, at least until the expiry of the time for any application to court.

(b) If the proposals considered below[57] for

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56. E.g., Chiswell v. Griffon Land and Estates Ltd. [1975] 1 W.L.R. 1181.

57. Paras. 3.3.11-3.3.16 and 3.4.6-3.4.8.

relaxing time limits for applications to the court and for changing the provisions about interim rents are adopted, it may be useful to have a procedure under which the tenant can definitely terminate his liability. The present counternotice provisions might usefully be replaced. The new alternative would give the tenant the right, although not the obligation, to serve notice which would disentitle him from applying for a renewal of the tenancy.[58] The current tenancy would then end on the date specified in the section 25 notice.

B. COURT APPLICATIONS

The present position

3.3.8 A tenant who wants to exercise his statutory right to a new tenancy, and who has not obtained the grant of one by agreement, must apply to the court. That application has to be made at least two months, but not more than four months, after the landlord gave notice to end the tenancy or the tenant requested a new one.[59] The court has no jurisdiction to extend these time limits, although the parties may waive them.[60] There have been many cases in which the rigidity of these time limits has resulted in

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58. Some consequential amendment might be required to make it clear that a tenant does not have the right to serve notice under s.27 once the landlord has served notice to end the tenancy under s.25.

59. Section 29(3).

60. Kammins Ballrooms Co. Ltd v. Zenith Investments (Torquay) Ltd [1971] A.C. 850.

tenants losing their chance to renew. Even though the need to apply to court within the time limits has always been drawn to tenants' attention by the prescribed forms of notice, these warnings have consistently failed to prevent them from observing the time limits.

Reform objectives

3.3.9 We regard it as undesirable that tenants should lose their statutory rights on what in some cases can be regarded as a technicality. All the same, they should not be in a position to take more time than is necessary. Most leases which are ripe for renewal reserve what has become a low rent; the tenant can be tempted to extend this advantage by procedural delay. In other cases, delays benefit landlords, e.g. where they are waiting for development plans to mature. They should also be prevented from deliberately slowing the renewal procedure. However, some negotiations are more complicated and need more time than others. There is no single period which can be laid down as the proper one for dealing with a lease renewal with reasonable despatch.

3.3.10 We suggest that the aims of the renewal procedure should be:

(a) to give a reasonable time for negotiation, so that most renewals are granted by agreement;

(b) to ensure that neither party can create unreasonable delay;

(c) to provide court proceedings to resolve disputed cases, but otherwise to avoid resort to court;

(d) to continue the current tenancy during any amended renewal procedure. This last aim should cause no difficulty, although the way in which it is carried into effect will necessarily vary, depending on how any new procedure works. It does not therefore require further discussion.

Possible reforms

3.3.11 The following possible reforms can be considered:

(a) Give the court discretion to waive time limits.

(b) Allow parties to vary limits by agreement.

(c) Remove time limits.

(d) Allow landlord to reimpose time limits.

(e) Allow either party to start proceedings.

We shall deal with each of these separately.

3.3.12. Discretion to waive time limits. The simplest reform would be to retain the present procedure, and merely to give the court express power to entertain applications made either too early or too late when it is just and equitable to do so. This should prevent the strict time limits being a trap, while preventing prevarication by the parties. However, it would do nothing to reduce the number of unnecessary court applications, and would presumably stimulate more cases from those who were applying to the court to exercise its discretion to extend the limits.

3.3.13. Variation by agreement. We have already pointed out at paragraph 3.3.8 above that one party can waive the other party's default in observing the time limits. However, it is not clear how far this can go. It has been argued that the parties can agree a general extension of the limits,[61] but there is considerable doubt whether an application to court would be effective after the date on which the 1954 Act ends the tenancy.[62] A new statutory provision would make the position certain, allowing a court application to be delayed for however long was necessary to obtain a new lease by agreement. Safeguards would be needed against one party with disproportionate bargaining power creating delays by insisting on postponing the court application; a provision permitting either party to go to the court at any time, notwithstanding an agreement, should cope with that. The result of a reform along these lines seems to provide what is wanted, but it does so in a complicated way: first, time limits are imposed, then they are relaxed. Those who do not realise that they must agree to extend the limits may still find themselves caught by a time limit trap. Furthermore, if a new time limit is fixed by agreement, it could simply be seen as substituting one trap for another.

3.3.14 Remove time limits. If the Act prescribed no time limits for court applications there would obviously be no trap for the unwary. Superfluous applications to court should also be avoided. However, without more, there would be no controls on delays created by the parties. To meet

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61. Note prepared on behalf of Law Society's Standing Committee on Land Law and Conveyancing [1981] L.S.G. 853.

62. Meah v. Sector Properties Ltd. [1974] 1 W.L.R. 547: there was no agreed extension of the time limit in that case.

the suggested criteria for a reform,[63] something more would be needed. Either of the final two suggestions could be added.

3.3.15 Reimpose limits. At present it is the tenant who must apply to the court to renew a lease. If that procedure continues, it is likely to be the landlord who is prejudiced by the removal of the time limit for applications: the tenant could still apply when he liked, but the landlord would have no way of precipitating a decision. To counteract that, the landlord could be given the right - probably by serving a formal notice - to impose a time limit on the tenant. In effect, he would challenge the tenant to apply to the court within a certain period or lose his right to renew. Once that notice had been served, the tenant would once again be subject to a strict time limit, and this could be seen as a reimposed trap.

3.3.16 Either party apply to court. There is no real reason why only the tenant should be able to apply to court. The issues between the parties are defined by the original notice and by later negotiations. The court could be seised of the matter either by the tenant applying for a new lease or by the landlord seeking a declaration that the tenant is not entitled to renew. The substance of the action would be identical in either case. Framing the procedure in this way would cut out the additional step and artificiality of the landlord challenging the tenant to go to court, when it is the landlord who wants the court decision. This is the proposal we provisionally favour.

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63. Para. 3.3.10 above.

Summary of issues

3.3.17 We invite views on the following matters relating to applications to the court for renewal of a business tenancy:

(a) Should the procedure be reformed, as we propose, to avoid the stringency of the present strict time limits?

(b) If so, should the change in the procedure take the form of

(i) giving the court a discretion to waive the time limits?

(ii) allowing the parties to vary the limits by agreement?

(iii) removing the time limits?

(iv) allowing the landlord to reimpose limits by notice to the tenant?

(v) as we suggest, allowing either party to commence proceedings?

4. INTERIM RENT

The present position

3.4.1. As the 1954 Act was originally enacted, the rent under the lease which was coming to an end continued until the new lease came into force; there was no half-way house. When the existing rent was particularly low there was

considerable incentive for the tenant to cause delay.[64] The economic benefit to the tenant, and the corresponding detriment to the landlord, was well illustrated in Re 88 High Road, Kilburn:[65] the old rent was £250 a year, and the market rent fixed on renewal under the Act was £3,000 a year.

3.4.2 On the recommendation of the Law Commission,[66] a new provision allowing landlords to apply for an interim rent was introduced by the Law of Property Act 1969. As a result, the court has jurisdiction to determine an interim rent, to be substituted for the contractual one. It runs from the landlord's application or (if later) the date for the end of the current lease in the landlord's notice or the tenant's request, until the new lease starts or the tenant quits.[67]

3.4.3 An interim rent is not, or not necessarily, the same as the market rent payable under a renewed lease.[68] Starting on the basis of the market rent, the court is directed to "have regard to the rent payable under the terms of the [current] tenancy", and to determine the rent payable for "a new tenancy from year to year of the whole property[69]

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64. Espresso Coffee Machine Co. Ltd. v. Guardian Assurance Co. Ltd. [1958] 1 W.L.R. 900, 903.

65. [1959] 1 All E.R. 527.

66. Report on the Landlord and Tenant Act 1954 Part II (1969), Law Com. No. 17, paras. 22-26.

67. Landlord and Tenant Act 1954, s. 24A.

68. Determined under section 34 of the Landlord and Tenant Act 1954.

69. I.e., not the property to be let under the renewed tenancy, which might be less.

comprised in the tenancy".[70] After some uncertainty, it now seems settled that the direction to have regard to the current rent provides a "cushion" for the tenant, bridging any steep step between the old and the new rents.[71] Normally, this means applying a small discount to the market rent, but in some cases the discount can be substantial.[72] Fixing the rent on the basis of a yearly tenancy, rather than for a term of years, also normally attracts a discount.[73]

A. SHOULD THERE BE INTERIM RENT?

The case for and against interim rent

3.4.4 The first, and fundamental, question raised about interim rent is whether it should continue. The original justification for it remains, notwithstanding the prevalence of rent review clauses. The challenge is in the other direction. Is there any justification for a tenant to enjoy the landlord's premises at less than the current market rent, and indeed is that not contrary to the policy of the Act? Even a relatively small percentage discount can be of substantial value to the tenant, and therefore be an incentive for delays. It is unrealistic, so the argument runs, that a tenant who has been in possession under a full rent and is going to be granted a new lease at a market rent

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70. Landlord and Tenant Act 1954, s.24A(3).

71. English Exporters (London) Ltd. v. Eldonwall Ltd. [1973] 1 All E.R. 726.

72. Charles Follett Ltd. v. Cabtell Investments Ltd. [1987] 2 E.G.L.R. 88, where the discount was 50 per cent.

73. E.g., Janes (Gowns) Ltd. v. Harlow Development Corporation (1980) 253 E.G. 799; UDS Tailoring Ltd. v. BL Holdings Ltd. (1982) 261 E.G. 49.

should be given an interim period at a discount. Every such benefit to a tenant is an equivalent detriment to his landlord.

3.4.5 Against those arguments is the undoubted fact underlying the provision as it now stands: the tenant does not have full security of tenure until the new lease is granted. If the landlord is contesting the renewal, there may be genuine doubt whether, and on what terms, any new lease will be granted. The market rent for occupation on those terms may well be below the market rent payable by a tenant who enjoys full security. Again, the new lease may necessarily comprise less property - because the tenant has sublet - and so to pay a higher rent on the whole premises as originally let could be unfair. The new rent may be such that the tenant declines to take the new lease,[74] but the interim rent is still payable.[75]

Provisional conclusions

3.4.6 The present provisions are flexible enough to deal with this variety of situations. Indeed, if there is no case for any discount on the market rent, none will be ordered.[76] However, we wonder whether there is a case for identifying the circumstances in which a full rent could be justified and treating such cases differently. Many, and we imagine most, lease renewals are settled by agreement.

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74. Landlord and Tenant Act 1954, s.36(2).

75. Ratners (Jewllers) Ltd v. Lemnoll Ltd. (1980) 255 E.G. 987.

76. Halberstam v. Tandalco Corporation NV [1985] 1 E.G.L.R. 90: in that case, there was no "cushion" discount (see para. 3.4.3).

There is no difference of opinion about whether there will be a new lease, merely a negotiation about its terms. The parties usually know the approximate rental figure which will be appropriate, so that the tenant can be confident in continuing his business at that property. Those are cases in which a continuous obligation to pay a market rent could be just.

3.4.7 For other tenants, there can be genuine uncertainty. It is our provisional view that this justifies the separate interim rent system that we have at present, with discounts from the market rent in many cases. We therefore suggest that it should continue, except perhaps in the special class of case we now identify.

3.4.8 New rent rules could apply where these conditions are met:

(a) the landlord's notice or the tenant's request relates to all the property let by the current lease;

(b) the tenant is in occupation of all the property; and

(c) in the landlord's notice, or his counternotice responding to the tenant's request, he states that he would not oppose the grant of a new tenancy.

For this type of case, unless in the event no new tenancy was granted, no special interim rent would be necessary. There might be complications in automatically backdating the start of the new lease, but the rent payable under it, whether determined by agreement or ordered by the court,

could be the interim rent. Effectively, therefore, that new rent would date back to the date given, in the landlord's notice or the tenant's request, for ending the current lease.

B. APPLICATIONS FOR INTERIM RENT

Should the tenant be able to apply for interim rent?

3.4.9 A number of problems have arisen in practice in connection with application for interim rents. The first is that only a landlord can apply to fix an interim rent. This presumably results from the system being introduced to counter delaying tactics by tenants enjoying artificially low rents. This can still happen, but with the development of rent review clauses in the last twenty years, there may be a different situation. Many review clauses operate on an "upwards only" basis. I.e., when there is a review, the new rent is required to be whichever is the higher of the current market rent and the rent then payable. So, there is always the possibility that a rent will be, and will then stay, above the market level. As the 1954 Act now stands, a landlord who is receiving too little rent when the renewal procedure starts can apply for an interim rent in order to increase it. But a tenant who, when the old lease ends, finds himself paying more than the market rent cannot apply to fix an interim rent so that he pays less.

3.4.10 If this problem is considered to merit a change in the Act, the solution seems obvious: to permit the tenant to apply to fix an interim rent, as well as the landlord. As most rents have continued to rise in recent years, this amendment might be of little practical effect. Nevertheless, it is probably justified, to demonstrate the evenhandedness of the law.

Problems on sub-letting

3.4.11 The second problem stems from the interaction of two rules. First, an application for interim rent under the Act must be made by the competent landlord, who may not be the immediate landlord of the tenant in possession.[77] This is consistent with the Act's providing that the statutory procedure is conducted between the tenant and the competent landlord. Second, an interim rent is "deemed to be the rent payable under the tenancy",[78] i.e., the interim rent becomes the contractual rent. Where the property has been sublet, and the subletting is coming to an end, the result can be unsatisfactory. Say, A let to B who sublet to C. It is the head landlord (A) who must apply for the interim rent, but the head tenant (B) who is entitled to receive what is payable - either as the original rent or the substituted interim rent - by the subtenant (C). In these circumstances, it is hardly surprising that A should be less than enthusiastic about making an application which, at least for a time, will only benefit B. It is also understandable that B should be aggrieved that he cannot make the application himself.

3.4.12 A subletting of part only of the property originally let reveals a further problem. In a case such as that involving the same three parties - A, B and C - the renewal procedure for a new lease of the whole property may be conducted between A and B. If A obtains an interim rent relating to the whole property, it is substituted for the rent reserved by the head lease, paid by B. However, B has been looking to C for reimbursement of part of his

77. Section 44(1).

78. Section 24A(2).

outgoings, but the sublease rent is not affected if A has made no claim against C, and there is no incentive for him to do so. Accordingly, B is out of pocket to the extent of the increased rent attributable to the part of the property sublet to C.

Possible reforms

3.4.13 We do not know whether such situations occur sufficiently frequently to justify amending the Act, and we should welcome information. Amendments could take these forms:

(a) A landlord could have power to apply for an interim rent even though he was not the competent landlord.

(b) An interim rent for the whole premises could be apportioned between parts of it; affected subtenants would presumably have a right to join in any action.

There is obviously a risk of proliferation of negotiations and court applications. We should be interested to hear whether those involved in practice consider that the scale of the problems merits further intervention.

3.4.14 More generally, there are those who question whether it should be necessary to make an express application to fix an interim rent. Even if it is less than the current market rent, the landlord could be automatically entitled to an interim rent. From one point of view, this looks as if it would avoid unnecessary court applications. Indeed, this would accord with our earlier objective to avoid unnecessary court proceedings, and it would avoid any

trap in requiring landlords to apply for an interim rent if they want one. However, we know that there are many cases in which landlords do not apply for an interim rent, often because they consider there is little to gain. A change to universal entitlement looks likely to stimulate more requests for interim rent in those cases. There is some advantage in positively warning tenants that there may be more to pay by requiring an express application. Our provisional view is therefore that the need for an application should not be generally abandoned.

3.4.15 In considering these points about applications, the impact of the possible abandonment of interim rents when renewal is not in doubt,[79] should be taken into account. If adopted, they might reduce the incidence of other problems. We therefore ask those who respond to indicate whether the adoption of those suggestions would influence their views on the issues raised in this section.

Summary of issues

3.4.16 Views in relation to application for interim rents are welcome on these points.

(a) Should tenants be able to apply to fix an interim rent?

(b) In relation to the problems created by subletting, i.e., head landlords without any incentive to apply and subtenants without any obligation to pay,

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79. Paras. 3.4.6-3.4.8 above.

(i) how widespread are the difficulties?

(ii) should those who cannot be parties to an application now be allowed to join in?

(c) Should there be an automatic entitlement to interim rent, without an application?

(d) Would dropping interim rents when renewal is not in doubt affect the answers to the foregoing questions?

5. CONTRACTING OUT

The present position

3.5.1 It would be inconvenient, if not impracticable, for the 1954 Act to cover, without exception, all tenancies which could fall within its ambit. Such blanket provisions would overwhelm the system and unreasonably burden landlords, without offering worthwhile benefits to tenants. The Act therefore contains cautious exempting provisions, with three main strands. First, any agreement which has the effect of depriving the tenant of his rights under the Act is made void.[80] Secondly, particular agreements are validated, some with the approval of the court.[81] Thirdly, some actions by which the tenant effectively gives up his

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80. Section 38(1); Joseph v. Joseph [1967] Ch. 48.

81. Section 38(4). S. 28 allows the landlord and tenant of a tenancy within the Act to reach an agreement for the grant of a new tenancy; the effect of such an agreement is that the Act ceases to apply to the existing tenancy.

rights[82] are valid if, but only if, before taking them, the tenant has been in occupation as tenant for one month.[83]

3.5.2 The effect of the principal provision invalidating contracts[84] is to render void any agreement (whether or not in the instrument creating the tenancy) insofar as it -

(a) purports to exclude the tenant from exercising rights under the Act; or

(b) provides for the termination or surrender of the tenancy should the tenant seek to renew it; or

(c) provides for the imposition of any penalty[85] or disability on the tenant in that event.

Only agreements which exclude the tenant's rights are invalidated. A contract which, on the contrary, gives the tenant the benefit the Act aims to confer, a renewal of his

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82. Giving notice to quit or surrendering a tenancy: Landlord and Tenant Act 1954, s.24(2)(a),(b); giving notice to end a tenancy for a term of years certain: s.27(2).

83. The one month occupation requirement was added by the Law of Property Act 1969, to counter such avoidance devices as the tenant giving the landord a notice to quit in blank before the tenancy was granted: see Report on the Landlord and Tenant Act 1954 Part II (1969), Law Com. No. 17, para. 29.

84. Section 38(1).

85. This can , e.g., include a requirement that the tenant pay the costs incurred by the landlord in serving notices under the Act's renewal procedure: Stevenson & Rush (Holdings) Ltd v. Langdon (1979) 38 P. & C.R. 208.

tenancy, is expressly recognised as valid.[86] We believe that the majority of business tenancies are renewed by agreement. There is clearly no need to invoke the jurisdiction of the courts in those circumstances.

3.5.3 There are three cases in which the tenant may unilaterally opt out of the statutory rights to which he would otherwise be entitled, provided, in each case, he has been in occupation as tenant for at least a month. First, he may give his landlord a notice to quit,[87] i.e., a notice in accordance with the tenancy.[88] Secondly, a tenant under a lease granted for a term of years certain may give three months' notice to end it,[89] either when the term would normally have expired, or if it is extended under the Act on any quarter day.[90] Thirdly, he may surrender the tenancy.[91] In this case, the surrender, or any agreement to which it was pursuant, must have been executed or entered into when the tenant had been in occupation for a month. In addition, a tenant who fails to comply with the Act's formalities, or fails to do so within time limits laid down,[92] will lose his statutory rights.

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86. Section 28.

87. Section 24(2)(a).

88. Section 69(1). This includes a notice exercising an option to end the lease: Scholl Mfg. Co. Ltd v. Clifton (Slim-Line) Ltd [1967] Ch. 41.

89. Section 27(1).

90. Section 27(2).

91. Section 24(2)(b). A surrender is not strictly unilateral, but the landlord may, in advance, have consented to accept it, thus effectively giving the tenant an option which he can unilaterally decide to exercise.

92. Section 29(2), (3).

3.5.4 There can be little doubt that invalidating private contracts which exclude the statutory rights is a useful and necessary safeguard. Experience of the landlord and tenant relationship in connection with all types of property indicates that there is rarely equality of bargaining power between the parties to a lease and that parties will go to considerable lengths to escape this type of regulation. We know of no complaint about the general principle, but the detail of the 1954 Act provisions has provoked some criticism. We therefore propose to concentrate our examination on that detail.

The problems

3.5.5 We have identified problems in three areas:

(a) Contracting out with court approval. The cases in which the parties can seek the approval of the court for an agreement to exclude the tenant's statutory right of renewal, which will be effective if approved, are strictly limited. Questions arise whether such limits are needed, and if so, whether they are at present correctly defined.

(b) Surrenders and agreements to surrender. The Act draws a distinction between agreements to surrender a tenancy and the actual surrender. Although the difference is clear in law - a surrender is a voluntary act by a tenant which ends the tenancy, and an agreement is a binding obligation to do so in the furture - some see inconsistencies in the Act's treatment of them.

(c) Offer back clauses. A particular problem arises in relation to covenants found in some leases. Typically, the provisions read in this way. In the event of the tenant wanting to assign the lease, he undertakes to offer to surrender it to the landlord, on terms specified in the lease. The landlord has the option to accept that offer, in which case he takes the property back and the lease ends, or to decline it. If he refuses the offer, the tenant is at liberty to assign the lease with the landlord's prior consent, which the landlord is not entitled unreasonably to refuse. The difficulty is that if the landlord accepts the tenant's offer to surrender, the Act invalidates that agreement. However, there is no mechanism which allows the tenant to proceed to assign the lease; the result is an unsatisfactory stalemate.

A. APPROVED CONTRACTING OUT

The Present Position

3.5.6 The chance to contract out of the Act's provisions giving the tenant renewal rights, with the court's prior[93] approval, was introduced in 1969. The court now has jurisdiction to authorise such an agreement if two conditions are satisfied. First, the application must be made jointly by the persons who will be the landlord and the tenant. Secondly, the tenancy when granted must be for a term of years certain.[94]

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93. Essexcrest Ltd. v. Evenlex Ltd. (1988) 55 P.7 C.R. 279.

94. Section 38(4) (a).

3.5.7 It has been suggested that the second condition may leave room for doubt whether the court has jurisdiction to approve an agreement relating to a tenancy containing an option to surrender before its term ends (a "break clause"). We doubt whether this is a correct view of the law. Indeed, Diplock L.J., interpreting a different section of the Act,[95] said,

> "A tenancy with a break clause is a tenancy for a term of years certain within the meaning of the Act of 1954...".[96]

Further, we understand that orders have been made approving agreements relating to such tenancies. It therefore seems to us that no action is required, unless anyone has evidence of difficulty to submit to us.

3.5.8 Applications for approval of agreements opting out of the 1954 Act's renewal provisions are made in an appreciable number of cases. In 1986, there were 11,651 applications, compared with 16,464 applications for new tenancies in the same year.[97]

Case for reform

3.5.9 The first matter for consideration is whether any reform is needed, because the present provisions may not achieve their objective. It is open to question how effective the court procedure is, as a check against the

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95. Section 69(1), definition of "notice to quit".

96. Scholl Mfg. Co. Ltd v. Clifton (Slim-Line) Ltd. [1967] Ch. 41, 51. Winn L.J. agreed.

97. Judicial Statistics (Cm. 173). In 1985 the corresponding figures were 10,313 and 15,941.

tenant giving up his statutory rights involuntarily or without appreciating the implications of what he is doing. An application has to be made by the parties jointly. The Act gives no guidance to the courts on the grounds on which they should consider whether or not to approve. Indeed, it has been said in the Court of Appeal, "We are told that the court invariably approves such an agreement when it is made by business people, properly advised by their lawyers. The court has no materials on which to refuse it."[98]

3.5.10 We believe that the procedure varies from one county court to another. Although few appear to examine with much care the bargain between the parties, and the circumstances in which it was entered into, it is noteworthy that some 15 per cent of applications are refused.[99] We have no way of knowing whether the reasons go to the merits of the cases, or whether the refusals are on technical grounds. We should be interested to hear from those with experience, to learn if they feel that at present the court provides an effective and worthwhile filter.

3.5.11 We recognise that even if the court plays no positive role, the existence of the requirement to make an application may be important. It means that a landlord who wishes to exclude the tenant's right to renew the tenancy is obliged to bring the point expressly to the tenant's attention. It therefore guarantees the tenant the chance to

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98. Hagee (London) Ltd v. A.B. Erikson & Larson [1976] Q.B. 209, 215 per Lord Denning M.R.

99. In 1986, 11,651 applications were filed in the county court under s.38(4) for approval of agreements excluding the provisions of the Act; approval was given in 9,838 cases. In 1985, the corresponding figures were 10,313 and 8,969: Judicial Statistics (Cm. 173).

consider the position, and should make it clear that what he is being invited to do is not a mere matter of routine. We should be glad to hear from those who have dealt with such cases whether they feel that this point is one which should be weighed seriously when reforms are considered.

3.5.12 The fact that the tenant is fully informed of his legal position may be the true value of the current requirement to apply to the court. That function could be fulfilled in another way. Contracting out of the Act could be permitted as it is now, provided that both the tenant and his solicitor sign a statement acknowledging that the tenant understands the nature of the agreement and of the right he has given up. The statement could conveniently be annexed to the counterpart lease, and its form might be prescribed. There is certainly some attraction in the fact that this proposal would avoid applications to the court which will often be little more than a formality. However, it depends on whether the value of the present procedure really rests on the explanations the tenant receives and whether the suggested statement would be a satisfactory substitute. We should welcome views on these points.

3.5.13 If it is truly the case that the present court procedure provides no effective protection for tenants, another question inevitably arises. Do tenants need that form of protection, or perhaps any protection, against landlords inviting them to agree to forego their statutory protection, in this type of case? The present procedure applies only in limited circumstances, and could be further restricted. It may be that circumscribing the class of case to which contracting out provisions can apply, and removing the present requirement of a largely formal court application, would provide sufficient protection for tenants against undue pressure from landlords. As an example, and there would clearly be other possibilities, contracting out

could be limited to leases for a fixed term not exceeding 5 years. To cut out the need to apply to the court would go some way to reducing the expense and time spent by the parties and the pressures on the courts.

3.5.14 On the other hand, even if the current arrangements for court approval are not particularly useful for tenants, that is not automatically a reason to scrap them. On the contrary, it may mean that they should be strengthened. Guidelines could be introduced for the exercise of the court's discretion to approve agreements. The court might perhaps be required to find that in the circumstances the agreement positively favoured the tenant, or that it was objectively unreasonable to expect the landlord to let the property if there was the prospect of the tenancy being renewed. Alternatively, the change could be procedural. The tenant might be required to file a statement acknowledging that he understood the nature of the rights he was surrendering. We invite those who consider that these requirements should be made more stringent to suggest what would be the most effective ways.

Summary of issues

3.5.15 Accordingly, we invite views on these points:

(a) How well do the current provisions for the approval of agreements to contract out operate in practice? In particular:

(i) Does the court provide an effective and worthwhile filter?

(ii) Does the need for a court application have value in ensuring that the issues are brought to the tenant's attention?

(iii) Have difficulties been encountered in seeking approval for new tenancies which incorporate a break clause?

(iv) On what grounds are applications for approval at present rejected?

(v) Should statute provide guidelines, and if so what, for the exercise of the court's discretion?

(b) Do tenants need the protection of a court application procedure at all? In particular:

(i) Would a statement by the tenant and his solicitor, that the tenant understands the significance of a proposed agreement, be a satisfactory substitute for approval by the court?

(ii) If the need for court approval were dispensed with, should the Act prescribe the circumstances in which contracted out agreements were allowed?

3.5.16 There remains one further point which has come to our attention in relation to the contracting out provisions. It is argued that the Act at present leaves uncertain the

status of a tenant who remains in possession at the end of a contracted out tenancy. We do not see that it is necessary for the Act to deal expressly with this. As the Act does not apply to a contracted out tenancy, it will expire by effluxion of time. In the light of the circumstances, it will be for the court to decide whether the tenant has become a periodic tenant or a tenant at will. In the latter case the tenant will have no rights under the Act.[100] A tenant holding over in these circumstances has been held to be a tenant at will.[101]

B. SURRENDERS AND AGREEMENTS TO SURRENDER

The present position

3.5.17 The Act's present provisions allowing the court to approve an agreement to surrender a tenancy to which it applies stem from the decision in Joseph v. Joseph,[102] which established that such an agreement was one which the Act invalidated, because it deprived the tenant of the chance of a statutory renewal.[103] This led to an amendment of the Act in 1969. The parties to a lease may now jointly apply to the court to authorise an agreement for the surrender of a tenancy, on such date or in such circumstances as it specifies.[104]

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100. Manfield and Sons Ltd v. Botchin [1970] 2 Q.B. 612; and see n. 4 to Part II above.

101. Cardiothoracic Institute v. Shrewdcrest Ltd [1986] 1 W.L.R. 368.

102. [1967] Ch. 78.

103. Para. 3.5.2 above.

104. Landlord and Tenant Act 1954, s.38(4)(b).

3.5.18 As we have pointed out,[105] the Act seeks to draw a clear distinction between an agreement to surrender at a future date and a surrender which takes effect at once. The policy behind this seems consistent. Once a tenant has his lease, there is no good reason for insisting that he retains it. Other provisions allow the tenant to serve a notice to quit in appropriate circumstances,[106] which has the same effect as a surrender, although a surrender requires the landlord's concurrence. To prevent the tenant surrendering the property to his landlord would be an encroachment on his freedom which is not necessary to defend the statutory right of renewal. On the other hand, to obtain from a tenant an undertaking in advance that he will surrender the lease sometime later is to invite him to forego those rights before he is in a position to judge how matters will stand at the date in question. The Act therefore limits the parties' freedom of contract when the tenant might be susceptible to undue persuasion by the landlord, without unnecessarily limiting their freedom to bargain. This seems to us to be a reasonable and satisfactory distinction in principle, but if there is disagreement we invite others to give their views.

3.5.19 On examination, however, the distinction between surrenders and agreements to surrender is not so clear-cut. In Tarjomani v. Panther Secruities Ltd[107] a landlord of business premises wrote in a letter that he would release the tenant from arrears of rent "in consideration of the surrender of [the lease] taking place today". The tenant countersigned the letter to indicate agreement but remained

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105. Para. 3.5.5 (b) above.

106. Para. 3.5.3 above.

107. (1983) 46 P & C.R. 32.

in possession. The judge accepted that there was a plain intention that there should be an immediate surrender. However, there was no effective surrender because, in the absence of a surrender by operation of law, that would have required a deed.[108] The result was an agreement to surrender, and as it had not been approved by the court, section 38(1) of the 1954 Act made it ineffective.

Provisional conclusion

3.5.20 Given the distinction which the 1954 Act seeks to draw, and the policy which appears to lie behind it, there seems to be a case for reform. While there are not likely to be many cases to which this applies, our provisional view is that the Act should cease to invalidate agreements to surrender which are intended to take immediate effect.

3.5.21 It is has been suggested that uncertainty about agreements to surrender is created by the wording of the Act itself. Section 24(2)(b) confirms that a tenant may surrender a tenancy to which the Act applies unless:

> "in the case of an instrument of surrender, the instrument was executed before, or was executed in pursuance of an agreement made before, the tenant had been in occupation in right of the tenancy for one month."

What is the significance of an agreement here? Section 38(1) of the Act has been held to invalidate all agreements to surrender.[109] Surely, therefore, it should be irrelevant whether the surrender was pursuant to an agreement made

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108. Law of Property Act 1925, section 52(1).

109. Para. 3.5.17 above.

before the tenant had been in occupation for a month, because whenever the agreement was entered into it would be ineffective.

3.5.22 It seems to us that sections 24(2)(b) and 38(1) are indeed inconsistent, and that it can be argued that the former casts doubt on the accepted meaning of the latter. We therefore provisionally recommend that the position be rectified by removing the reference to agreements in the earlier section.

Summary of issues

3.5.23 In relation to surrenders and agreements to surrender, we invite views on:

(a) whether the distinction between agreements to surrender, rendered invalid by the Act, and surrenders, which are permitted, is satisfactory?

(b) whether agreements to surrender which are intended to take immediate effect should be valid, as the surrenders are?

(c) whether, as we suggest, section 24(2)(b) of the Act should be amended to omit references to agreements to surrender?

C. Offer Back Clauses

The problem

3.5.24 The general validity of offer back clauses[110] has been established in cases[111] which accept that they do not contravene the statutory rule that in certain cases a landlord may not unreasonably withhold consent to the tenant assigning.[112]

3.5.25 The difficulty in relation to business tenancies was highlighted by the decision in Allnatt London Properties Ltd. v. Newton.[113] The case concerned a lease of business premises which contained a tenant's covenant not to assign the demised property. That was subject to a proviso that if the tenant wished to assign, he would offer to surrender the lease for a payment representing any net premium value that it had. If that offer was not accepted within a stated time, the tenant was to be at liberty to assign with the landlord's consent, which was not unreasonably to be refused. The Court of Appeal held, without going into the consequences, that the agreement reached by the landlord accepting the tenant's offer was made invalid by section 38(1) of the Landlord and Tenant Act 1954.

3.5.26 That meant that the landlord could not insist on taking the property back, because there was no binding agreement to surrender. On the other hand, there was nothing more that the tenant could do, because his right to assign, albeit with the landlord's consent, only arose if

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110. Para. 3.5.5(c) above.

111. Adler v. Upper Grosvenor Street Investments Ltd. [1957] 1 All E.R. 229; Bocardo SA v. S & M Hotels Ltd. [1980] 1 W.L.R. 17.

112. Landlord and Tenant Act 1927, section 19(1).

113. [1984] 1 All E.R. 423.

the landlord did not accept the offer to surrender, and he had accepted it.

Provisional conclusion

3.5.27 In our view, that result is plainly unsatisfactory in practice. Further, it is contrary to the policy of the 1954 Act which, while it does not allow unrestricted contracting out of the renewal rights in advance of their taking effect, does not seek to restrict tenants from disposing of their property even by returning it to their landlord. We provisionally take the view that this is a situation which should be tackled by reform, and invite others to comment.

3.5.28 Further, this seems to be a case where a reform of retrospective effect, varying leases which have already been granted, is essential. We have no information about the number of leases that there are at present containing offer back clauses, but older existing leases are the ones with which there is most likely to be difficulty. Those which have been granted since the publication of the Allnatt decision may well have avoided including offer back clauses. Although it would be as well to put matters on a satisfactory footing for the future, there does seem to be a need for a rescue operation to change the effect of those existing clauses which can now create a hiatus. There is in fact an argument for saying that nothing need be done for the future, because a landlord seeking an offer back clause can suggest a joint application to the court to approve it. That, of course, ignores cases in which the clause is included without a prior application to the court. They can still end in stalemate. We should welcome views not only on the nature of the proposed reform, but as to which leases it should cover.

Possible reforms

3.5.29 One approach to reform is to invalidate an offer back clause, in whole or in part. Certainly, if all offer back clauses were invalidated, the difficulty which we have identified would disappear. However, those clauses normally contain the leases' only provision limiting the right which tenants have, unless restricted, freely to dispose of the property. To transform such leases into ones which impose no restraint on disposals by the tenant would be drastically to change the nature of the bargain between landlord and tenant. A more limited, and perhaps more acceptable, intervention would be only to invalidate the requirement to offer to surrender. That would normally leave the clause as one under which the tenant was entitled to assign with the landlord's consent.

3.5.30 A solution which nullifies the offer back provision takes no account of the fact that the landlord may have had special reasons for wanting it. It seems unlikely that legislation could comprehensively define the cases in which it should be permitted. However, the landlord - who, it seems, is likely to be the party wanting to ensure that the clause operates in accordance with its terms - could be given the opportunity to ask for court authority to enforce the surrender provision.[114] Possible alternative bases of jurisdiction are:

(a) The landlord could apply for validation of the clause on the ground that in all the circumstances it was reasonable for the lease to be in that form. If he failed to

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114. If landlord and tenant are in agreement, they could make a joint application under s. 38(4).

establish that, the offer back provision, but not the whole clause, would be invalid.

(b) In any particular case in which the landlord had accepted an offer to surrender, he could apply for the agreement to operate on the ground that there were special circumstances justifying his requiring a surrender. If he failed, the tenant would be entitled to assign in accordance with the remaining provisions of the clause.

(c) The landlord could apply, again in relation to a particular agreement, that it should be valid, on the ground that the tenant would receive the full market value of the property from him and that the agreement would not prejudice him in the disposal of anything else, e.g., other property, fixtures and fittings, goodwill.

3.5.31 Yet another possibility is that there could be a form of offer back clause authorised by statute, on the basis that it made fair provision for both parties. This form of clause would be valid, and all others invalid. That would represent a new departure in the history of legislative intervention in the landlord and tenant relationship: there has not previously been approval and validation of one single form of clause incorporating a particular obligation. We doubt whether that would be a satisfactory or an acceptable approach. An approved clause would be inflexible, and it would be hard to guarantee that the form would be appropriate in all cases. Further, its validation would imply an approval which might not be appropriate to the circumstances of every transaction. This approach would be likely to encourage the use of offer

back clauses, because of the emphasis placed on them, and we doubt whether that is desirable.

3.5.32 There are almost certainly other ways in which this problem could be tackled. We should welcome details of alternative proposals that anyone may favour.

Summary of issues

3.5.33 In relation to offer back clauses, we therefore invite comments on the following points:

(a) Is this, as we suggest, a problem which requires reform?

(b) Should any reform affect existing leases, leases granted after the reform is enacted, or both?

(c) Should the reform be to invalidate

(i) the whole of such clauses?

(ii) the offer back provisions in such clauses?

(d) Should the reform allow landlords to apply to the courts

(i) to declare the clause valid on the ground that it was reasonable for the lease to be in that form?

(ii) to validate a particular agreement to surrender on the ground that special

circumstances justified requiring a surrender?

(iii) to validate a particular agreement to surrender on the grounds that the tenant would receive full market value under it and would not be prejudiced in any other disposal?

(e) Should a standard form of offer back clause be validated, and all others be invalid?

(f) Should there be some other reform?

6. MISCELLANEOUS PROPOSALS

A. LENGTH OF NEW TERM

The present position

3.6.1 A series of provisions in the 1954 Act empowers the court to decide the terms of a new lease to be granted to the tenant in possession, and a number of them have attracted criticism. Nevertheless, most changes to them would shift the fundamental balance of the Act; we have not considered them for that reason. There is however one which can come within the scope of this periodic review: the duration of the new term. At present, the new tenancy may be as agreed between the parties,[115] or in default of agreement "shall be such a tenancy as may be determined by

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115. The duration of a term agreed by the parties can be incorporated into a court order even though it exceeds the maximum length the court can otherwise order: e.g., Janes (Gowns) Ltd. v. Harlow Development Corporation (1979) 253 E.G. 799 (a 20-year term).

the court to be reasonable in all the circumstances, being, if it is a tenancy for a term of years certain, a tenancy for a term not exceeding 14 years".[116]

Criticisms

3.6.2 The criticisms of this provision centre on the maximum of 14 years, and there are three concerns:

(a) First, the lease which is expiring may have been granted for a considerably longer term. It may have been a long lease granted at a ground rent, but rack rent tenancies of commercial properties are now commonly granted for 35 years. There will be circumstances in which it is inappropriate that the renewal be for a much reduced period; now that there is express authority to order the inclusion of a rent review clause in the new lease,[117] the landlord's position for a longer new lease is safeguarded;

(b) Second, a 14-year maximum term is inconvenient because the most common rent review pattern now found in commercial leases is for a review every five years, which argues for a total term of years divisible by five. Review patterns change with the market; seven years was previously common, and by contrast, when general inflation was high, leases with rent

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116. Section 33.

117. Section 34(3).

reviews every three or even every two years were seen;

(c) Third, although 14-year leases were once common, as were 21-year terms, lettings for five, 15, 25 and 35 years are now more often found. Rents negotiated for new lettings are therefore most commonly based on those terms. Those rents are generally used as "comparables" in assessing rents on renewals, which are based on the sum for which the property "might reasonably be expected to be let in the open market".[118] The assessment of new rents by comparison will be more accurate if the same lengths of lease are involved, and that is an argument for permitting the periods of leases to be the same as are found in the open market.

These factors suggest that the limit should not be dictated by current market preferences, but in considering the position one must recognise that those preferences change.

Reform considerations

3.6.3 The court has a wide discretion to fix the length of the new letting, and takes many factors into account. It is probably most influenced by the period for which the tenant has already enjoyed the property. However, the new term has been restricted where the tenant's previous

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118. Section 34(1).

individual leases had been short,[119] where the landlord had redevelopment prospects,[120] and where the landlord wanted to occupy the property but narrowly missed qualifying by five years' ownership.[121] The landlord may also persuade the court that he should have an option prematurely to end the new lease.[122] In other circumstances, the tenant who has relocation plans may request, and be given, only a short term,[123] but the court may extend the period which the tenant requested to give the landlord opportunity to relet.[124]

3.6.4 The courts have certainly demonstrated a flexible approach in their exercise of this discretion. This suggests that, although extension of the period would give tenants a chance of greater security, there would still be adequate protection for landlords. The view has already been expressed, in this connection, that "it was no part of the policy ... of the 1954 Act to give security of tenure to a business tenant at the expense of preventing redevelopment".[125]

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119. Betty's Cafes Ltd. v. Phillips Furnishing Stores Ltd. [1959] A.C. 20.

120. London & Provincial Millinery Stores Ltd. v. Barclays Bank Ltd. [1962] 1 W.L.R. 510.

121. Upsons Ltd. v. E. Robins Ltd. [1956] 1 Q.B. 131.

122. Adams v. Green (1978) 247 E.G. 49.

123. CBS United Kingdom Ltd. v. London Scottish Properties Ltd. [1985] 2 E.G.L.R. 125.

124. Re Sunlight House, Quay Street, Manchester (1959) 173 E.G. 311.

125. Adams v. Green (1978) 247 E.G. 49, 51 per Stamp LJ.

Reform proposals

3.6.5 A modest reform would be to extend the maximum limit on the court's powers, so that it could order a new term of up to 15, or perhaps 25 or 35, years. A more sweeping alternative would be to remove the limit altogether. This might be done in reliance on the existing requirement that the court determine a period it considers "to be reasonable in all the circumstances".[126] On the other hand, more guidance could be given. The court might, e.g., be directed to "have regard to" the length of the current lease, the period which the tenant has occupied the property in that capacity, prevailing market conditions. These and other matters may well already be taken into account, but we invite those who respond to this Working Paper to say whether they see advantages in expressly stating criteria to be taken into account, and if so what they should be.

Summary of issues

3.6.6 We invite views relating to the court's power to fix the period of the new lease on these points:

(a) Should the present provision, limiting the period of the new lease the court can order, be amended?

(b) If so, should the maximum term be increased to 15, 25 or 35 years, or to some other period?

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126. Section 33.

(c) Or, should there be no maximum period?

(d) In that case, should the Act state the matters, and if so what matters, which the court is to take into account?

B. COMPENSATION

(a) Refusal of new tenancy

(i) The present position

3.6.7 Tenants who are refused a new tenancy on any of three grounds not involving fault on their part - uneconomic subletting,[127] the landlord's intention to demolish or reconstruct[128] and the landlord's intention to occupy the premises[129] - are entitled to compensation from the landlord on quitting. The amount is based on the rateable value of the property: currently,[130] it is three times the rateable value unless the tenant or his successor in business have been in occupation throughout the previous 14 years, in which case it rises to six times the rateable value.[131]

3.6.8 The system of basing compensation on rateable values has been the subject of controversy, but any radical

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127. Section 30(1)(e).

128. Section 30(1)(f).

129. Section 30(1)(g).

130. "The appropriate multiplier" is applied to the rateable value, and that multiplier is fixed from time to time by order of the Secretary of State: s. 37(8).

131. Section 37(1)-(3).

change seems beyond the scope of a periodic review of this nature. However, one relatively minor point was highlighted by a recent decision, and merits consideration.

3.6.9 In Edicron Ltd. v. William Whiteley Ltd.[132] the tenant gave up possession of a three-storey building in circumstances in which it was entitled to compensation. It had been tenant of one floor for over 14 years, and of the other two floors for five and a half years. The question arose whether it was entitled to compensation at the higher or the lower rate. The Court of Appeal held that occupation of some part of the property for at least 14 years qualified the tenant for compensation at the higher rate.

(ii) Case for reform

3.6.10 To decide that compensation should be paid wholly at either rate - and the court pointed out that a single rate for any one claim was the only possible construction of the present provision - seems unsatisfactory. The amount of compensation could change materially, to the profit of one party and the loss of the other, because of the period of occupation of an insignificant part of the property.

3.6.11 Although this does not seem to be a satisfactory position, we do not know whether it is a situation which occurs sufficiently frequently to merit reform. If it does, the obvious cure seems to be to pay compensation at the appropriate rates, calculated on the respective rateable

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132. [1984] 1 W.L.R. 59.

values of the parts occupied for the longer and the shorter periods.

(iii) Summary of issues

3.6.12 We therefore invite comment on:

(a) whether any reform is merited?

(b) if so, whether, as we suggest, the level of compensation should be calculated on the period of occupation of each part of the property?

(b) Misrepresentation

(i) The present position

3.6.13 The Act contains another separate provision for compensation in particular circumstances. If the court refuses an order for a new tenancy and it later appears that the decision was induced by a misrepresentation or concealment of material facts, the court may order the landlord to pay the tenant compensation for any resulting damage or loss.[133]

3.6.14 Before the 1969 amendments to the 1954 Act, compensation on quitting was only payable if the court was precluded from making an order for a new tenancy on one of the specified grounds.[134] As the Law Commission explained,

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133. Section 55.

134. Para. 3.6.7 above.

> "It is pointed out that tenants may be put to unnecessary trouble and expense in making applications for new tenancies, which they know will be refused, in order simply to enforce their rights to compensation under the Act. ... We support in principle the proposal, widely urged by those we have consulted, that a tenant should be entitled to compensation under section 37 not only where an application for a new tenancy has been made and refused, but also where a tenant has not made an application".[135]

The 1954 Act was accordingly amended so that compensation is payable "where no other ground [than one entitling the tenant to compensation] is specified in the landlord's notice under section 25 ... or, as the case may be, under section 26(6)...".[136]

3.6.15 The result is that where, e.g., a landlord serves notice ending a tenancy and stating that he would oppose the grant of a new tenancy on the ground that he intends to demolish and reconstruct the property, the tenant is entitled to compensation on quitting even if he does not apply to the court for a new tenancy. However, only if he applies to court, and has his application refused, can he be entitled to compensation for misrepresentation under the 1954 Act.[137]

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135. Report on the Landlord and Tenant Act 1954 Part II (1969), Law Com. No. 17, paras. 46-47.

136. Section 37(1).

137. He may, of course, be entitled to damages at common law.

(ii) Case for reform

3.6.16 It seems to us illogical that this right should require an initial application to court in circumstances which might demonstrably be hopeless, and which the 1969 amendment recognised should not be necessary. We know of no cases in which this possible lacuna has caused injustice. However, we do not consider that this is a case in which one should wait for a tenant's misfortune to demonstrate the need for change. It is likely that, had the connection between these two provisions been recognised in 1969, there would have been a further amendment to extend the compensation for misrepresentation. On this further review of the Act, the omission can be rectified.

(iii) Summary of issues

3.6.17 We therefore invite comments on whether there should, as we suggest, be compensation for loss from misrepresentation where a tenant loses his right to renew without making a court application.

PART IV

INDEX TO ISSUES AND QUESTIONS RAISED IN PART III

At the end of the discussion of each issue raised in Part III, we identified the matters and questions on which we would welcome comments. For the convenience of readers, the paragraphs summarising those matters are identified below.

Topic	Paragraph
Ownership of business	3.1.16
Leases of incorporeal hereditaments	3.1.25
Unauthorised business use	3.1.33
Landlord's notice to terminate tenancy, where reversion is split	3.2.23
Tenant's request to renew periodic tenancy	3.2.32
Tenant's "pre-emptive strike"	3.2.32
Tenant's notice to end fixed-term tenancy	3.2.34
Sanctions for failure to give information	3.2.38
Service of landlord's counternotice	3.3.5
Service of tenant's counternotice	3.3.7

Topic	Paragraph
Court application time limits	3.3.17
Changes in interim rent	3.4.8
Applications for interim rent	3.4.16
Approved contracting out	3.5.15
Surrenders and agreements to surrender	3.5.23
Offer-back clauses	3.5.33
Length of term of new tenancy	3.6.6
Compensation for refusal of new tenancy	3.6.12
Compensation for misrepresentation	3.6.17

APPENDIX

LANDLORD AND TENANT ACT 1954
Sections 23-46, 55, 64 and 69

PART II
SECURITY OF TENURE FOR BUSINESS, PROFESSIONAL AND OTHER TENANTS

Tenancies to which Part II applies

Tenacies to which Part II applies

23.- (1) Subject to the provisions of this Act, this Part of this Act applies to any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes.

(2) In this Part of this Act the expression "business" includes a trade, profession or employment and includes any activity carried on by a body of persons, whether corporate or unincorporate.

(3) In the following provisions of this Part of this Act the expression "the holding", in relation to a tenancy to which this Part of this Act applies, means the property comprised in the tenancy, there being excluded any part thereof which is occupied neither by the tenant nor by a person employed by the tenant and so employed for the purposes of a business by reason of which the tenancy is one to which this Part of this Act applies.

(4) Where the tenant is carrying on a business, in all or any part of the property comprised in a tenancy, in breach of a prohibition (however expressed) of use for business purposes which subsists under the terms of the tenancy and extends to the whole of that property, this Part of this Act shall not apply to the tenancy unless the immediate landlord or his predecessor in title has consented to the breach or the immediate landlord has acquiesced therein.

In this subsection the reference to a prohibition of use for business purposes does not include a prohibition of use for the purposes of a specified business, or of use for purposes of any but a specified business, but save as aforesaid includes a prohibition of use for the purposes of some one or more only of the classes of business specified in the definition of that expression in subsection (2) of this section.

Continuation and renewal of tenancies

Continuation of tenancies to which Part II applies and grant of new tenancies

24.- (1) A tenancy to which this Part of this Act applies shall not come to an end unless terminated in accordance with the provisions of this Part of this Act; and, subject to the provisions of section 29 of this Act, the tenant under such a tenancy may apply to the court for a new tenancy -

(a) if the landlord has given notice under section 25 of this Act to terminate the tenancy, or

(b) if the tenant has made a request for a new tenancy in accordance with section 26 of this Act.

(2) The last foregoing subsection shall not prevent the coming to an end of a tenancy by notice to quit given by the tenant, by surrender or forfeiture, or by the forfeiture of a superior tenancy, unless -

(a) in the case of a notice to quit, the notice was given before the tenant had been in occupation in right of the tenancy for one month; or

(b) in the case of an instrument of surrender, the instrument was executed before, or was executed in pursuance of an agreement made before, the tenant had been in occupation in right of the tenancy for one month.

(3) Notwithstanding anything in subsection (1) of this section, -

(a) where a tenancy to which this Part of this Act applies ceases to be such a tenancy, it shall not come to an end by reason only of the cesser, but if it was granted for a term of years certain and has been continued by subsection (1) of this section then (without prejudice to the termination thereof in accordance with any terms of the tenancy) it may be terminated by not less than three nor more than six months' notice in writing given by the landlord to the tenant;

(b) where, at a time when a tenancy is not one to which this Part of this Act applies, the landlord gives notice to quit, the operation of the notice shall not be affected by reason that the tenancy becomes one to which this Part of this Act applies after the giving of the notice.

Rent while tenancy continues by virtue of s. 24

24A.- (1) The landlord of a tenancy to which this Part of this Act applies may, -

(a) if he has given notice under section 25 of this Act to terminate the tenancy; or

(b) if the tenant has made a request for a new tenancy in accordance with section 26 of this Act;

apply to the court to determine a rent which it would be reasonable for the tenant to pay while the tenancy continues by virtue of section 24 of this Act, and the court may determine a rent accordingly.

(2) A rent determined in proceedings under this section shall be deemed to be the rent payable under the tenancy from the date on which the proceedings were commenced or the date specified in the landlord's notice or the tenant's request, whichever is the later.

(3) In determining a rent under this section the court shall have regard to the rent payable under the terms of the tenancy, but otherwise subsections (1) and (2) of section 34 of this Act shall apply to the determination as they would apply to the determination of a rent under that section if a new tenancy from year to year of the whole of the property comprised in the tenancy were granted to the tenant by order of the court.

Termination of tenancy by the landlord

25.- (1) The landlord may terminate a tenancy to which this Part of this Act applies by a notice given to the tenant in the prescribed form specifying the date at which the tenancy is to come to an end (hereinafter referred to as "the date of termination"):

Provided that this subsection has effect subject to the provisions of Part IV of this Act as to the interim continuation of tenancies pending the disposal of applications to the court.

(2) Subject to the provisions of the next following subsection, a notice under this section shall not have effect unless it is given not more than twelve nor less than six months before the date of termination specified therein.

(3) In the case of a tenancy which apart from this Act could have been brought to an end by notice to quit given by the landlord -

(a) the date of termination specified in a notice under this section shall not be earlier than the earliest date on which apart from this Part of this Act the tenancy could have been brought to an end by notice to quit given by the landlord on the date of the giving of the notice under this section; and

(b) where apart from this Part of this Act more than six months' notice to quit would have been required to bring the tenancy to an end, the last foregoing subsection shall have effect with the substitution for twelve months of a period six months longer than the length of notice to quit which would have been required as aforesaid.

(4) In the case of any other tenancy, a notice under this section shall not specify a date of termination earlier than the date on which apart from this Part of this Act the tenancy would have come to an end by effluxion of time.

(5) A notice under this section shall not have effect unless it requires the tenant, within two months after the giving of the notice, to notify the landlord in writing whether or not, at the date of termination, the tenant will be willing to give up possession of the property comprised in the tenancy.

(6) A notice under this section shall not have effect unless it states whether the landlord would oppose an application to the court under this Part of this Act for the grant of a new tenancy and, if so, also states on which of the grounds mentioned in section thirty of this Act he would do so.

Tenant's request for a new tenancy

26.- (1) A tenant's request for a new tenancy may be made where the tenancy under which he holds for the time being (hereinafter referred to as "the current tenancy") is a tenancy granted for a term of years certain exceeding one year, whether or not continued by section twenty-four of this Act, or granted for a term of years certain and thereafter from year to year.

(2) A tenant's request for a new tenancy shall be for a tenancy beginning with such date, not more than twelve nor less than six months after the making of the request, as may be specified therein:

Provided that the said date shall not be earlier than the date on which apart from this Act the current tenancy would come to an end by effluxion of time or could be brought to an end by notice to quit given by the tenant.

(3) A tenant's request for a new tenancy shall not have effect unless it is made by notice in the prescribed form given to the landlord and sets out the tenant's

proposals as to the property to be comprised in the new tenancy (being either the whole or part of the property comprised in the current tenancy), as to the rent to be payable under the new tenancy and as to the other terms of the new tenancy.

(4) A tenant's request for a new tenancy shall not be made if the landlord has already given notice under the last foregoing section to terminate the current tenancy, or if the tenant has already given notice to quit or notice under the next following section; and no such notice shall be given by the landlord or the tenant after the making by the tenant of a request for a new tenancy.

(5) Where the tenant makes a request for a new tenancy in accordance with the foregoing provisions of this section, the current tenancy shall, subject to the provisions of subsection (2) of section thirty-six of this Act and the provisions of Part IV of this Act as to the interim continuation of tenancies, terminate immediately before the date specified in the request for the beginning of the new tenancy.

(6) Within two months of the making of a tenant's request for a new tenancy the landlord may give notice to the tenant that he will oppose an application to the court for the grant of a new tenancy, and any such notice shall state on which of the grounds mentioned in section thirty of this Act the landlord will oppose the application.

Termination by tenant of tenancy for fixed term

27.- (1) Where the tenant under a tenancy to which this Part of this Act applies, being a tenancy granted for a term of years certain, gives to the immediate landlord, not later than three months before the date on which apart from this Act the tenancy would come to an end by effluxion of time, a

notice in writing that the tenant does not desire the tenancy to be continued, section 24 of this Act shall not have effect in relation to the tenancy, unless the notice is given before the tenant has been in occupation in right of the tenancy for one month.

(2) A tenancy granted for a term of years certain which is continuing by virtue of section 24 of this Act may be brought to an end on any quarter day by not less than three months' notice in writing given by the tenant to the immediate landlord, whether the notice is given after the date on which apart from this Act the tenancy would have come to an end or before that date, but not before the tenant has been in occupation in right of the tenancy for one month.

Renewal of tenancies by agreement

28. Where the landlord and tenant agree for the grant to the tenant of a future tenancy of the holding, or of the holding with other land, on terms and from a date specified in the agreement, the current tenancy shall continue until that date but no longer, and shall not be a tenancy to which this Part of this Act applies.

Application to court for new tenancies

Order by court for grant of a new tenancy

29.- (1) Subject to the provisions of this Act, on an application under subsection (1) of section twenty-four of this Act for a new tenancy the court shall make an order for the grant of a tenancy comprising such property, at such rent and on such other terms, as are hereinafter provided.

(2) Where such an application is made in consequence of a notice given by the landlord under section twenty-five of this Act, it shall not be entertained unless

the tenant has duly notified the landlord that he will not be willing at the date of termination to give up possession of the property comprised in the tenancy.

(3) No application under subsection (1) of section twenty-four of this Act shall be entertained unless it is made not less than two nor more than four months after the giving of the landlord's notice under section twenty-five of this Act or, as the case may be, after the making of the tenant's request for a new tenancy.

Opposition by landlord to application for new tenancy

30.- (1) The grounds on which a landlord may oppose an application under subsection (1) of section 24 of this Act are such of the following grounds as may be stated in the landlord's notice under section 25 of this Act or, as the case may be, under subsection (6) of section 26 thereof, that is to say:-

(a) where under the current tenancy the tenant has any obligations as respects the repair and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with the said obligations;

(b) that the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due;

(c) that the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding;

(d) that the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the current tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his business and to the situation and extent of, and facilities afforded by, the holding;

(e) where the current tenancy was created by the sub-letting of part only of the property comprised in a superior tenancy and the landlord is the owner of an interest in reversion expectant on the termination of that superior tenancy, that the aggregate of the rents reasonably obtainable on separate lettings of the holding and the remainder of that property would be substantially less than the rent reasonably obtainable on a letting of that property as a whole, that on the termination of the current tenancy the landlord requires possession of the holding for the purpose of letting or otherwise disposing of the said property as a whole, and that in view thereof the tenant ought not to be granted a new tenancy;

(f) that on the termination of the current tenancy the landlord intends to demolish or

reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding;

(g) subject as hereinafter provided, that on the termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him therein, or as his residence.

(2) The landlord shall not be entitled to oppose an application on the ground specified in paragraph (g) of the last foregoing subsection if the interest of the landlord, or an interest which has merged in that interest and but for the merger would be the interest of the landlord, was purchased or created after the beginning of the period of five years which ends with the termination of the current tenancy, and at all times since the purchase or creation thereof the holding has been comprised in a tenancy or successive tenancies of the description specified in subsection (1) of section 23 of this Act.

(3) Where the landlord has a controlling interest in a company any business to be carried on by the company shall be treated for the purposes of subsection (1)(g) of this section as a business to be carried on by him.

For the purposes of this subsection, a person has a controlling interest in a company if and only if either -

(a) he is a member of it and able, without the consent of any other person, to appoint or remove the holders of at least a majority of the directorships; or

(b) he holds more than one-half of its equity share capital, there being disregarded any shares held by him in a fiduciary capacity or as nominee for another person;

and in this subsection "company" and "share" have the meanings assigned to them by section 735(1) and 744 of the Companies Act 1985 and "equity share capital" the meaning assigned to it by section 744 of that Act.

Dismissal of application for new tenancy where landlord successfully opposes

31.- (1) If the landlord opposes an application under subsection (1) of section twenty-four of this Act on grounds on which he is entitled to oppose it in accordance with the last foregoing section and establishes any of those grounds to the satisfaction of the court, the court shall not make an order for the grant of a new tenancy.

(2) Where in a case not falling within the last foregoing subsection the landlord opposes an application under the said subsection (1) on one or more of the grounds specified in paragraphs (d), (e) and (f) of subsection (1) of the last foregoing section but establishes none of those grounds to the satisfaction of the court, then if the court would have been satisfied of any of those grounds if the date of termination specified in the landlord's notice or, as the case may be, the date specified in the tenant's request for a new tenancy as the date from which the new tenancy is to begin, had been such later date as the court may determine, being a date not more than one year later than the date so specified, -

(a) the court shall make a declaration to that effect, stating of which of the said grounds the court would have been satisfied as aforesaid and specifying the date determined by the court as aforesaid, but shall not make an order for the grant of a new tenancy;

(b) if, within fourteen days after the making of the declaration, the tenant so requires the court shall make an order substituting the said date for the date specified in the said landlord's notice or tenant's request, and thereupon that notice or request shall have effect accordingly.

Grant of new tenancy in some cases where s. 30(1)(f) applies

31A.- (1) Where the landlord opposes an application under section 24(1) of this Act on the ground specified in paragraph (f) of section 30(1) of this Act the court shall not hold that the landlord could not reasonably carry out the demolition, reconstruction or work of construction intended without obtaining possession of the holding if -

(a) the tenant agrees to the inclusion in the terms of the new tenancy of terms giving the landlord access and other facilities for carrying out the work intended and, given that access and those facilities, the landlord could reasonably carry out the work without obtaining possession of the holding and without interfering to a substantial extent or for a substantial time with the use of the holding for the purposes of the business carried on by the tenant; or

(b) the tenant is willing to accept a tenancy of an economically separable part of the holding and either paragraph (a) of this section is satisfied with respect to that part or possession of the remainder of the holding would be reasonably sufficient to enable the landlord to carry out the intended work.

(2) For the purposes of subsection (1)(b) of this section a part of a holding shall be deemed to be an economically separate part if, and only if, the aggregate of the rents which, after the completion of the intended work, would be reasonably obtainable on separate lettings of that part and the remainder of the premises affected by or resulting from the work would not be substantially less than the rent which would then be reasonably obtainable on a letting of those premises as a whole.

Property to be comprised in new tenancy

32.- (1) Subject to the following provisions of this section, an order under section 29 of this Act for the grant of a new tenancy shall be an order for the grant of a new tenancy of the holding; and in the absence of agreement between the landlord and the tenant as to the property which constitutes the holding the court shall in the order designate that property by reference to the circumstances existing at the date of the order.

(1A) Where the court, by virtue of paragraph (b) of section 31A(1) of this Act, makes an order under section 29 of this Act for the grant of a new tenancy in a case where the tenant is willing to accept a tenancy of part of the holding, the order shall be an order for the grant of a new tenancy of that part only.

(2) The foregoing provisions of this section shall not apply in a case where the property comprised in the current tenancy includes other property besides the holding and the landlord requires any new tenancy ordered to be granted under section 29 of this Act to be a tenancy of the whole of the property comprised in the current tenancy; but in any such case -

(a) any order under the said section 29 for the grant of a new tenancy shall be an order for the grant of a new tenancy of the whole of the property comprised in the current tenancy, and

(b) references in the following provisions of this Part of this Act to the holding shall be construed as references to the whole of that property.

(3) Where the current tenancy includes rights enjoyed by the tenant in connection with the holding, those rights shall be included in a tenancy ordered to be granted under section 29 of this Act, except as otherwise agreed between the landlord and the tenant or, in default of such agreement, determined by the court.

Duration of new tenancy

33. Where on an application under this Part of this Act the court makes an order for the grant of a new tenancy, the new tenancy shall be such tenancy as may be agreed between the landlord and the tenant, or, in default of such an agreement, shall be such a tenancy as may be determined by the court to be reasonable in all the circumstances, being, if it is a tenancy for a term of years certain, a tenancy for a term not exceeding fourteen years, and shall begin on the coming to an end of the current tenancy.

Rent under new tenancy

34.- (1) The rent payable under a tenancy granted by order of the court under this Part of this Act shall be such as may be agreed between the landlord and the tenant or as, in default of such agreement, may be determined by the court to be that at which, having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing lessor, there being disregarded -

(a) any effect on rent of the fact that the tenant has or his predecessors in title have been in occupation of the holding,

(b) any goodwill attached to the holding by reason of the carrying on thereat of the business of the tenant (whether by him or by a predecessor of his in that business),

(c) any effect on rent of an improvement to which this paragraph applies,

(d) in the case of a holding comprising licensed premises, any addition to its value attributable to the licence, if it appears to the court that having regard to the terms of the current tenancy and any other relevant circumstances the benefit of the licence belongs to the tenant.

(2) Paragraph (c) of the foregoing subsection applies to any improvement carried out by a person who at the time it was carried out was the tenant, but only if it was carried out otherwise than in pursuance of an obligation to his immediate landlord and either it was carried out during the current tenancy or the following conditions are satisfied, that is to say, -

(a) that it was completed not more than twenty-one years before the application for the new tenancy was made; and

(b) that the holding or any part of it affected by the improvement has at all times since the completion of the improvement been comprised in tenancies of the description specified in section 23(1) of this Act; and

(c) that at the termination of each of those tenancies the tenant did not quit.

(3) Where the rent is determined by the court the court may, if it thinks fit, further determine that the terms of the tenancy shall include such provision for varying the rent as may be specified in the determination.

Other terms of new tenancy

35.- The terms of a tenancy granted by order of the court under this Part of this Act (other than terms as to the duration thereof and as to the rent payable thereunder) shall be such as may be agreed between the landlord and the tenant or as, in default of such agreement, may be determined by the court; and in determining those terms the court shall have regard to the terms of the current tenancy and to all relevant circumstances.

Carrying out of order for new tenancy

36.- (1) Where under this Part of this Act the court makes an order for the grant of a new tenancy, then, unless the order is revoked under the next following subsection or the landlord and the tenant agree not to act upon the order,

the landlord shall be bound to execute or make in favour of the tenant, and the tenant shall be bound to accept, a lease or agreement for a tenancy of the holding embodying the terms agreed between the landlord and the tenant or determined by the court in accordance with the foregoing provisions of this Part of this Act; and where the landlord executes or makes such a lease or agreement the tenant shall be bound, if so required by the landlord, to execute a counterpart or duplicate thereof.

(2) If the tenant, within fourteen days after the making of an order under this Part of this Act for the grant of a new tenancy, applies to the court for the revocation of the order the court shall revoke the order; and where the order is so revoked, then, if it is so agreed between the landlord and the tenant or determined by the court, the current tenancy shall continue, beyond the date at which it would have come to an end apart from this subsection, for such period as may be so agreed or determined to be necessary to afford to the landlord a reasonable opportunity for reletting or otherwise disposing of the premises which would have been comprised in the new tenancy; and while the current tenancy continues by virtue of this subsection it shall not be a tenancy to which this Part of this Act applies.

(3) Where an order is revoked under the last foregoing subsection any provision thereof as to payment of costs shall not cease to have effect by reason only of the revocation; but the court may, if it thinks fit, revoke or vary any such provision or, where no costs have been awarded in the proceedings for the revoked order, award such costs.

(4) A lease executed or agreement made under this section, in a case where the interest of the lessor is subject to a mortgage, shall be deemed to be one authorised

by section ninety-nine of the Law of Property Act 1925 (which confers certain powers of leasing on mortgagors in possession), and subsection (13) of that section (which allows those powers to be restricted or excluded by agreement) shall not have effect in relation to such a lease or agreement.

Compensation where order for new tenancy precluded on certain grounds

37.- (1) Where on the making of an application under section 24 of this Act the court is precluded (whether by subsection (1) or subsection (2) of section 31 of this Act) from making an order for the grant of a new tenancy by reason of any of the grounds specified in paragraphs (e), (f) and (g) of subsection (1) of section 30 of this Act and not of any grounds specified in any other paragraph of that subsection, or where no other ground is specified in the landlord's notice under section 25 of this Act or, as the case may be, under section 26(6) thereof, than those specified in the said paragraphs (e), (f) and (g) and either no application under the said section 24 is made or such an application is withdrawn, then, subject to the provisions of this Act, the tenant shall be entitled on quitting the holding to recover from the landlord by way of compensation an amount determined in accordance with the following provisions of this section.

(2) The said amount shall be as follows, that is to say, -

(a) where the conditions specified in the next following subsection are satisfied it shall be the product of the appropriate multiplier and twice the rateable value of the holding,

(b) in any other case it shall be the product of the appropriate multiplier and the rateable value of the holding.

(3) The said conditions are -

(a) that, during the whole of the fourteen years immediately preceding the termination of the current tenancy, premises being or comprised in the holding have been occupied for the purposes of a business carried on by the occupier or for those and other purposes;

(b) that, if during those fourteen years there was a change in the occupier of the premises, the person who was the occupier immediately after the change was the successor to the business carried on by the person who was the occupier immediately before the change.

(4) Where the court is precluded from making an order for the grant of a new tenancy under this Part of this Act in the circumstances mentioned in subsection (1) of this section, the court shall on the application of the tenant certify that fact.

(5) For the purposes of subsection (2) of this section the rateable value of the holding shall be determined as follows:-

(a) where in the valuation list in force at the date on which the landlord's notice under section 25 or, as the case may be, subsection (6) of section 26 of this Act is given a value is then shown as the annual value (as hereinafter defined) of the holding, the rateable value of the holding shall be taken to be that value;

(b) where no such value is so shown with respect to the holding but such a value or such values is or are so shown with respect to premises comprised in or comprising the holding or part of it, the rateable value of the holding shall be taken to be such value as is found by a proper apportionment or aggregation of the value or values so shown;

(c) where the rateable value of the holding cannot be ascertained in accordance with the foregoing paragraphs of this subsection, it shall be taken to be the value which, apart from any exemption from assessment to rates, would on a proper assessment be the value to be entered in the said valuation list as the annual value of the holding;

and any dispute arising, whether in proceedings before the court or otherwise, as to the determination for those purposes of the rateable value of the holding shall be referred to the Commissioners of Inland Revenue for decision by a valuation officer.

An appeal shall lie to the Lands Tribunal from any decision of a valuation officer under this subsection, but subject thereto any such decision shall be final.

(6) The Commissioners of Inland Revenue may by statutory instrument make rules prescribing the procedure in connection with references under this section.

(7) In this section -

the reference to the termination of the current tenancy is a reference to the date of

termination specified in the landlord's notice under section 25 of this Act or, as the case may be, the date specified in the tenant's request for a new tenancy as the date from which the new tenancy is to begin;

the expression "annual value" means rateable value except that where the rateable value differs from the net annual value the said expression means net annual value;

the expression "valuation officer" means any officer of the Commissioners of Inland Revenue for the time being authorised by a certificate of the Commissioners to act in relation to a valuation list.

(8) In subsection (2) of this section "the appropriate multiplier" means such multiplier as the Secretary of State may by order made by statutory instrument prescribe.

(9) A statutory instrument containing an order under subsection (8) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Restrictions on agreements excluding provisions of Part II

38.- (1) Any agreement relating to a tenancy to which this Part of this Act applies (whether contained in the instrument creating the tenancy or not) shall be void (except as provided by subsection (4) of this section) in so far as it purports to preclude the tenant from making an application or request under this Part of this Act or provides for the termination or the surrender of the tenancy in the event of his making such an application or request or for the imposition of any penalty or disability on the tenant in that event.

(2) Where -

(a) during the whole of the five years immediately preceding the date on which the tenant under a tenancy to which this Part of this Act applies is to quit the holding, premises being or comprised in the holding have been occupied for the purposes of a business carried on by the occupier or for those and other purposes, and

(b) if during those five years there was a change in the occupier of the premises, the person who was the occupier immediately after the change was the successor to the business carried on by the person who was the occupier immediately before the change,

any agreement (whether contained in the instrument creating the tenancy or not and whether made before or after the termination of that tenancy) which purports to exclude or reduce compensation under the last foregoing section shall to that extent be void, so however that this subsection shall not affect any agreement as to the amount of any such compensation which is made after the right to compensation has accrued.

(3) In a case not falling within the last foregoing subsection the right to compensation conferred by the last foregoing section may be excluded or modified by agreement.

(4) The court may -

(a) on the joint application of the persons who will be the landlord and the tenant in relation to a tenancy to be granted for a term of years certain which will be a tenancy to which this Part of this Act applies, authorise an agreement excluding in relation to that tenancy the provisions of sections 24 to 28 of this Act; and

(b) on the joint application of the persons who are the landlord and the tenant in relation to a tenancy to which this Part of this Act applies, authorise an agreement for the surrender of the tenancy on such date or in such circumstances as may be specified in the agreement and on such terms (if any) as may be so specified;

if the agreement is contained in or endorsed on the instrument creating the tenancy or such other instrument as the court may specify; and an agreement contained in or endorsed on an instrument in pursuance of an authorisation given under this subsection shall be valid notwithstanding anything in the preceding provisions of this section.

General and supplementary provisions

Duty of tenants and landlords of business premises to give information to each other

40.- (1) Where any person having an interest in any business premises, being an interest in reversion expectant (whether immediately or not) on a tenancy of those premises, serves on the tenant a notice in the prescribed form

requiring him to do so, it shall be the duty of the tenant to notify that person in writing within one month of the service of the notice -

(a) whether he occupies the premises or any part thereof wholly or partly for the purposes of a business carried on by him, and

(b) whether his tenancy has effect subject to any sub-tenancy on which his tenancy is immediately expectant and, if so, what premises are comprised in the sub-tenancy, for what term it has effect (or, if it is terminable by notice, by what notice it can be terminated), what is the rent payable thereunder, who is the sub-tenant, and (to the best of his knowledge and belief) whether the sub-tenant is in occupation of the premises or of part of the premises comprised in the sub-tenancy and, if not, what is the sub-tenant's address.

(2) Where the tenant of any business premises, being a tenant under such a tenancy as is mentioned in subsection (1) of section twenty-six of this Act, serves on any of the persons mentioned in the next following subsection a notice in the prescribed form requiring him to do so, it shall be the duty of that person to notify the tenant in writing within one month after the service of the notice -

(a) whether he is the owner of the fee simple in respect of those premises or any part thereof or the mortgagee in possession of such an owner and, if not,

(b) (to the best of his knowledge and belief) the name and address of the person who is his or, as the case may be, his mortgagor's immediate landlord in respect of those premises or of the part in respect of which he or his mortgagor is not the owner in fee simple, for what term his or his mortgagor's tenancy thereof has effect and what is the earliest date (if any) at which that tenancy is terminable by notice to quit given by the landlord.

(3) The persons referred to in the last foregoing subsection are, in relation to the tenant of any business premises, -

(a) any person having an interest in the premises, being an interest in reversion expectant (whether immediately or not) on the tenant's, and

(b) any person being a mortgagee in possession in respect of such an interest in reversion as is mentioned in paragraph (a) of this subsection;

and the information which any such person as is mentioned in paragraph (a) of this subsection is required to give under the last foregoing subsection shall include information whether there is a mortgagee in possession of his interest in the premises and, if so, what is the name and address of the mortgagee.

(4) The foregoing provisions of this section shall not apply to a notice served by or on the tenant more than two years before the date on which apart from this Act his

tenancy would come to an end by effluxion of time or could be brought to an end by notice to quit given by the landlord.

(5) In this section -

the expression "business premises" means premises used wholly or partly for the purposes of a business;

the expression "mortgagee in possession" includes a receiver appointed by the mortgagee or by the court who is in receipt of the rents and profits, and the expression "his mortgagor" shall be construed accordingly;

the expression "sub-tenant" includes a person retaining possession of any premises by virtue of the Rent Act 1977 after the coming to an end of a sub-tenancy, and the expression "sub-tenancy" includes a right so to retain possession.

Trusts

41.- (1) Where a tenancy is held on trust, occupation by all or any of the beneficiaries under the trust, and the carrying on of a business by all or any of the beneficiaries, shall be treated for the purposes of section twenty-three of this Act as equivalent to occupation or the carrying on of a business by the tenant; and in relation to a tenancy to which this Part of this Act applies by virtue of the foregoing provisions of this subsection -

(a) references (however expressed) in this Part of this Act and in the Ninth Schedule to this Act to the business of, or to carrying on of business, use, occupation or enjoyment by, the tenant shall be construed as including references to the business of, or to carrying on of business, use, occupation or enjoyment by, the beneficiaries or beneficiary;

(b) the reference in paragraph (d) of subsection (1) of section thirty-four of this Act to the tenant shall be construed as including the beneficiaries or beneficiary; and

(c) a change in the persons of the trustees shall not be treated as a change in the person of the tenant.

(2) Where the landlord's interest is held on trust the references in paragraph (g) of subsection (1) of section thirty of this Act to the landlord shall be construed as including references to the beneficiaries under the trust or any of them; but, except in the case of a trust arising under a will or on the intestacy of any person, the reference in subsection (2) of that section to the creation of the interest therein mentioned shall be construed as including the creation of the trust.

Partnerships

41A.- (1) The following provisions of this section shall apply where -

(a) a tenancy is held jointly by two or more persons (in this section referred to as the joint tenants); and

(b) the property comprised in the tenancy is or includes premises occupied for the purposes of a business; and

(c) the business (or some other business) was at some time during the existence of the tenancy carried on in partnership by all the persons who were then the joint tenants or by those and other persons and the joint tenants' interest in the premises was then partnership property; and

(d) the business is carried on (whether alone or in partnership with other persons) by one or some only of the joint tenants and no part of the property comprised in the tenancy is occupied, in right of the tenancy, for the purposes of a business carried on (whether alone or in partnership with other persons) by the other or others.

(2) In the following provisions of this section those of the joint tenants who for the time being carry on the business are referred to as the business tenants and the others as the other joint tenants.

(3) Any notice given by the business tenants which, had it been given by all the joint tenants, would have been -

(a) a tenant's request for a new tenancy made in accordance with section 26 of this Act; or

(b) a notice under subsection (1) or subsection (2) of section 27 of this Act;

shall be treated as such if it states that it is given by virute of this section and sets out the facts by virtue of which the persons giving it are the business tenants; and references in those sections and in section 24A of this Act to the tenant shall be construed accordingly.

(4) A notice given by the landlord to the business tenants which, had it been given to all the joint tenants, would have been a notice under section 25 of this Act shall be treated as such a notice, and references in that section to the tenant shall be construed accordingly.

(5) An application under section 24(1) of this Act for a new tenancy may, instead of being made by all the joint tenants, be made by the business tenants alone; and where it is so made -

(a) this Part of this Act shall have effect, in relation to it, as if the references therein to the tenant included references to the business tenants alone; and

(b) the business tenants shall be liable, to the exclusion of the other joint tenants, for the payment of rent and the discharge of any other obligation under the current tenancy for any rental period beginning after the date specified in the landlord's notice under section 25 of this Act or, as the case may be, beginning on or after the date specified in their request for a new tenancy.

(6) Where the court makes an order under section 29(1) of this Act for the grant of a new tenancy on an application made by the business tenants it may order the

grant to be made to them or to them jointly with the persons carrying on the business in partnership with them, and may order the grant to be made subject to the satisfaction, within a time specified by the order, of such conditions as to guarantors, sureties or otherwise as appear to the court equitable, having regard to the omission of the other joint tenants from the persons who will be the tenants under the new tenancy.

(7) The business tenants shall be entitled to recover any amount payable by way of compensation under section 37 or section 59 of this Act.

Group of companies

42.- (1) For the purposes of this section two bodies corporate shall be taken to be members of a group if and only if one is a subsidiary of the other or both are subsidiaries of a third body corporate.

In this subsection "subsidiary" has the same meaning as is assigned to it for the purposes of the Companies Act 1985 by section 736 of that Act.

(2) Where a tenancy is held by a member of a group, occupation by another member of the group, and the carrying on of a business by another member of the group, shall be treated for the purposes of section 23 of this Act as equivalent to occupation or the carrying on of a business by the member of the group holding the tenancy; and in relation to a tenancy to which this Part of this Act applies by virtue of the foregoing provisions of this subsection -

(a) references (however expressed) in this Part of this Act and in the Ninth Schedule to this Act to the business of or to use occupation or

enjoyment by the tenant shall be construed as including references to the business of or to use occupation or enjoyment by the said other member;

(b) the reference in paragraph (d) of subsection (1) of section 34 of this Act to the tenant shall be construed as including the said other member; and

(c) an assignment of the tenancy from one member of the group to another shall not be treated as a change in the person of the tenant.

(3) Where the landlord's interest is held by a member of a group -

(a) the reference in paragraph (g) of subsection (1) of section 30 of this Act to intended occupation by the landlord for the purposes of a business to be carried on by him shall be construed as including intended occupation by any member of the group for the purposes of a business to be carried on by that member; and

(b) the reference in subsection (2) of that section to the purchase or creation of any interest shall be construed as a reference to a purchase from or creation by a person other than a member of the group.

Tenancies excluded from Part II

43.- (1) This Part of this Act does not apply -

(a) to a tenancy of an agricultural holding or a tenancy which would be a tenancy of an agricultural holding if subsection (3) of section 2 of the Agricultural Holdings Act 1986 did not have effect or, in a case where approval was given under subsection (1) of that section, if that approval had not been given;

(b) to a tenancy created by a mining lease;

(c) .....

(d) to a tenancy of premises licensed for the sale of intoxicating liquor for consumption on the premises, other than -

(i) premises which are structurally adapted to be used, and are bona fide used, for a business which comprises one or both of the following, namely, the reception of guests and travellers desiring to sleep on the premises and the carrying on of a restaurant, being a business a substantial proportion of which consists of transactions other than the sale of intoxicating liquor;

(ii) premises adapted to be used, and bona fide used, only for one or more of the following purposes, namely, for judicial or public administrative purposes, or as a theatre or place of public or private entertainment, or as public gardens or picture galleries, or for exhibitions, or for any similar purpose to which the holding of the licence is merely ancillary;

(iii) premises adapted to be used, and bona fide used, as refreshment rooms at a railway station.

(2) This Part of this Act does not apply to a tenancy granted by reason that the tenant was the holder of an office, appointment or employment from the grantor thereof and continuing only so long as the tenant holds the office, appointment or employment, or terminable by the grantor on the tenant's ceasing to hold it, or coming to an end at a time fixed by reference to the time at which the tenant ceases to hold it:

Provided that this subsection shall not have effect in relation to a tenancy granted after the commencement of this Act unless the tenancy was granted by an instrument in writing which expressed the purpose for which the tenancy was granted.

(3) This Part of this Act does not apply to a tenancy granted for a term certain not exceeding six months unless -

(a) the tenancy contains provision for renewing the term or for extending it beyond six months from its beginning; or

(b) the tenant has been in occupation for a period which, together with any period during which any predecessor in the carrying on of the business carried on by the tenant was in occupation, exceeds twelve months.

Jurisdiction of county court to make declaration

43A. Where the rateable value of the holding is such that the jurisdiction conferred on the court by any other provision of this Part of this Act is, by virtue of section 63 of this Act, exercisable by the county court, the county court shall have jurisdiction (but without prejudice to the jurisdiction of the High Court) to make any declaration as to any matter arising under this Part of this Act, whether or not any other relief is sought in the proceedings.

Meaning of "the landlord" in Part II, and provisions as to mesne landlords, etc.

44.- (1) Subject to the next following subsection, in this Part of this Act the expression "the landlord", in relation to a tenancy (in this section referred to as "the relevant tenancy"), means the person (whether or not he is the immediate landlord) who is the owner of that interest in the property comprised in the relevant tenancy which for the time being fulfils the following conditions, that is to say -

(a) that it is an interest in reversion expectant (whether immediately or not) on the termination of the relevant tenancy, and

(b) that it is either the fee simple or a tenancy which will not come to an end within fourteen months by effluxion of time and, if it is such a tenancy, that no notice has been given by virtue of which it will come to an end within fourteen months or any further time by which it may be continued under section 36(2) or section 64 of this Act,

and is not itself in reversion expectant (whether immediately or not) on an interest which fulfils those conditions.

(2) References in this Part of this Act to a notice to quit given by the landlord are references to a notice to quit given by the immediate landlord.

(3) The provisions of the Sixth Schedule to this Act shall have effect for the application of this Part of this Act to cases where the immediate landlord of the tenant is not the owner of the fee simple in respect of the holding.

46. In this Part of this Act:-

"business" has the meaning assigned to it by subsection (2) of section twenty-three of this Act;

"current tenancy" has the meaning assigned to it by subsection (1) of section twenty-six of this Act;

"date of termination" has the meaning assigned to it by subsection (1) of section twenty-five of this Act;

subject to the provisions of section thirty-two of this Act, "the holding" has the meaning assigned to it by subsection (3) of section twenty-three of this Act;

"mining lease" has the same meaning as in the Landlord and Tenant Act 1927.

MISCELLANEOUS AND SUPPLEMENTARY

Compensation for possession obtained by misrepresentation

55.- (1) Where under Part I of this Act an order is made for possession of the property comprised in a tenancy, or under Part II of this Act the court refuses an order for the grant of a new tenancy, and it is subsequently made to appear to the court that the order was obtained, or the court induced to refuse the grant, by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the tenant such sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of the order or refusal.

(2) In this section the expression "the landlord" means the person applying for possession or opposing an application for the grant of a new tenancy, and the expression "the tenant" means the person against whom the order for possession was made or to whom the grant of a new tenancy was refused.

Interim continuation of tenancies pending determination by court

64.- (1) In any case where -

(a) a notice to terminate a tenancy has been given under Part I or Part II of this Act or a request for a new tenancy has been made under Part II thereof, and

(b) an application to the court has been made under the said Part I or the said Part II, as the case may be, and

(c) apart from this section the effect of the notice or request would be to terminate the tenancy before the expiration of the period of three months beginning with the date on which the application is finally disposed of,

the effect of the notice or request shall be to terminate the tenancy at the expiration of the said period of three months and not at any other time.

(2) The reference in paragraph (c) of subsection (1) of this section to the date on which an application is finally disposed of shall be construed as a reference to the earliest date by which the proceedings on the application (including any proceedings on or in consequence of an appeal) have been determined and any time for appealing or further appealing has expired, except that if the application is withdrawn or any appeal is abandoned the reference shall be construed as a reference to the date of the withdrawal or abandonment.

Interpretation

69.- (1) In this Act the following expressions have the meanings hereby assigned to them respectively, that is to say:-

"agricultural holding" has the same meaning as in the Agricultural Holdings Act 1986;

"development corporation" has the same meaning as in the New Towns Act 1981;

"local authority" has the same meaning as in the Town and Country Planning Act 1971;

"mortgage" includes a charge or lien and "mortgagor" and "mortgagee" shall be construed accordingly;

"notice to quit" means a notice to terminate a tenancy (whether a periodical tenancy or a tenancy for a term of years certain) given in accordance with the provisions (whether express or implied) of that tenancy;

"repairs" includes any work of maintenance, decoration or restoration, and references to repairing, to keeping or yielding up in repair and to state of repair shall be construed accordingly;

"statutory undertakers" has the same meaning as in the Town and Country Planning Act 1971, except that it includes the British Coal Corporation;

"tenancy" means a tenancy created either immediately or derivatively out of the freehold, whether by a lease or underlease, by an agreement for a lease or underlease or by a tenancy agreement or in pursuance of any enactment (including this Act), but does not include a mortgage term or any interest arising in favour of a mortgagor by his attorning tenant to his mortgagee, and references to the granting of a tenancy and to demised property shall be construed accordingly;

"terms", in relation to a tenancy, includes conditions.

(2) References in this Act to an agreement between the landlord and the tenant (except in section seventeen and subsections (1) and (2) of section thirty-eight thereof) shall be construed as references to an agreement in writing between them.

(3) References in this Act to an action for any relief shall be construed as including references to a claim for that relief by way of counterclaim in any proceedings.

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